Jan. 7. 1873.

Rennsa Bradley Jr

Filed

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES

No. ~~529.~~ 84

GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ MANUEL GALLEGOS, SIGMUND SELIGMAN, EMANUEL SPIEGELBERG, LEHMAN SPIEGELBERG, BERNHARD SELIGMAN, F. CHAVES, M. A. OTERO, JOSÉ LEANDRO PEREA, PLAINTIFFS IN ERROR,

vs.

THE TERRITORY OF NEW MEXICO, EX RELATIONE W. W. GRIFFIN, ADMINISTRATOR DE BONIS NON OF CHARLES S. HINCKLEY, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

**FILED MARCH 23, 1871.**

Dec. 2187

# SUPREME COURT OF THE UNITED STATES.

## No. 529.

GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ MANUEL GALLEGOS, SIGMUND SELIGMAN, EMANUEL SPIEGELBERG, LEHMAN SPIEGELBERG, BERNHARD SELIGMAN, F. CHAVES, M. A. OTERO, JOSÉ LEANDRO PEREA, PLAINTIFFS IN ERROR,

vs.

THE TERRITORY OF NEW MEXICO, EX RELATIONE W. W. GRIFFIN, ADMINISTRATOR DE BONIS NON OF CHARLES S. HINCKLEY, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

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*a* Supreme Court, Territory of New Mexico.

THE TERRITORY OF NEW MEXICO, FOR THE USE of W. W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased, appellee,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ Manuel Gallegos, Sigmund Seligman and Emanuel Spiegelberg, appellants.

Be it remembered that on the 22d day of December, A. D. 1870, the following transcript of the record in the above entitled cause was filed in the office of the clerk of the supreme court of the Territory of New Mexico, by the clerk of the district court for the County of Santa Fé, in the first judicial district of said Territory, which said transcript is in the words and figures following, to wit:

*b* First judicial district, Territory of New Mexico, county of Santa Fé.

*Transcript.*

THE TERRITORY OF NEW MEXICO, FOR THE USE of W. W. Griffin, administrator de bonis non of the estate and effects of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ Manuel Gallegos, Sigmund Seligman, Emanuel Spiegelberg.

Filed in my office this 22d day of December, A. D. 1870.
WM. BREEDEN,
*Clerk.*

1 THE TERRITORY OF NEW MEXICO, FOR the use of W. W. Griffin, administrator de bonis non of the estate and effects of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ Manuel Gallegos, Sigmund Seligman, Emanuel Spiegelberg, and Luz Ortiz de Pino, administratrix of the estate of Miguel E. Pino, deceased. } Debt.

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

In the district court of the first judicial district, sitting in the county of Santa Fé, Territory of New Mexico, for the trial causes arising under the laws of the Territory, at the February term A. D. 1870.

To the Hon. Joseph G. Palen, chief justice of the supreme court of said Territory, and judge of the first jud. dist. court:

2 Your petitioner, the Territory of New Mexico, plaintiff in this suit, for the use and benefit of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased, com-

plains of George T. Beall, Abraham Staab, José Manuel Gallegos, and Sigmund Seligman, all residents of the city and county of Santa Fé, in the Territory aforesaid, and Emanuel Spiegelberg, a resident of the city and State of New York, all defendants, of a plea of debt; for that whereas the said defendants, George T. Beall, Abraham Staab, José Manuel Gallegos, Sigmund Seligman, Emanuel Spiegelberg, and the said Miguel Pino, in his lifetime, on the second day of November, in the year of our Lord one thousand eight hundred and sixty-six, at "Santa Fé de Nuevo Mejico," that is to say, at the county of Santa Fé aforesaid, by their certain writing obligatory, sealed with their respective seals, and to the court here shown, a copy of which is herewith filed and marked Exhibit "A" and made a part of this petition, the date whereof is the same day and year aforesaid, acknowledge themselves held and bound jointly and separately to the said Territory of
3 New Mexico, in the sum of one hundred and twenty thousand dollars, to be paid to said Territory of New Mexico; which said writing obligatory was, and is, subject to a certain condition and covenant thereunder written, whereby after reciting to the effect following, to wit: That whereas the said principal, George T. Beall, had on that day been appointed by the probate judge of said county of Santa Fé, administrator and executor of the goods and estate of Charles S. Hinckley, deceased, according to the last will and testament of said deceased, it was conditioned, if the said George T. Beall, executor and administrator, should account for, pay, and deliver all moneys and effects of said estate to the legal heirs of said deceased, and execute the last testamentary will of said deceased, and do all other things relative to said administration, as required by law, or by order of the probate court of the County of Santa Fé, or whatever other court having jurisdiction in the premises, then, and in that case, this obligation should be void and of no effect, otherwise to reman in full force and effect, as by said writing obligatory and the condition thereof will more fully and at large appear. Yet the said plaintiff in fact saith, that said George T. Beall, executor and administrator as aforesaid, did not well and truly
4 perform the duties enjoined upon him by law as executor and administrator of said estate, and did not do all other things required of him by law to be done relative to the administration of said estate.

And for assigning a further breach of said condition, said plaintiff avers, that at the time of the death of said Charles S. Hinckley, to wit, on the 29th day of October, A. D. 1866, at the county of Santa Fé, aforesaid, the interest of the estate of said Charles S. Hinckley in the firm of Hinckley, Blake and Wardwell, composed of said deceased in his lifetime and Charles Blake and William V. B. Wardwell, then doing business at Fort Craig, New Mexico, and other places in said Territory, as sutlers, merchants, and traders, was then and there reasonably worth the sum of sixty thousand dollars, and consisted of goods, wares, merchandise, real estate, mines, and credits, which said interest consisting as aforesaid, the said George T. Beall, executor and administrator as aforesaid, on the tenth day of January, A. D. 1867, unlawfully, and by a verbal agreement and contract, disposed of the same for the sum of forty-six thousand five hundred and thirty-eight dollars and
5 sixty cents, to said Charles Blake and William V. B. Wardwell, surviving partners as aforesaid, and in pursuance of said verbal contract and agreement, did agree to receive said sum of money for said interest, thereby allowing said interest of said deceased to remain in the possession of said Charles Blake and William V. B. Wardwell, and by

them and the said George T. Beall converted to their own use and benefit, which said interest of said estate, amounting to the sum of sixty thousand dollars, being the assets of said estate, the said George T. Beall, executor and administrator as aforesaid, has neglected and refused and still doth neglect and refuse to pay over to the said William W. Griffin, administrator de bonis non of said estate, or any other person lawfully entitled to said assets, contrary to his duty as such administrator and executor, although often requested so to do.

And for assigning a further breach of said condition, said plaintiff avers, that at the time of the death of said Charles S. Hinckley, the assets belonging to the estate of said deceased, then in the hands of said George T. Beall were reasonably worth the sum of sixty
6 thousand dollars, which said assets of the value aforesaid, and belonging to said estate, through want of attention, and neglect on the part of said George T. Beall, administrator as aforesaid, and the illegal conduct and action of the said George T. Beall, administrator and executor as aforesaid, in the matter of the administration of said estate, the same became wholly and entirely lost, wasted, and dissipated, at, to wit, the county of Santa Fé, aforesaid.

By reason of which said breaches, the said writing obligatory became forfeited, and thereby an action hath accrued to the said plaintiff, to have of and from said defendants the sum of one hundred and twenty thousand dollars above demanded; yet the said defendants, although often requested, have not as yet, either of them, paid said sum of money above demanded nor any part thereof to said plaintiff nor to said William W. Griffin, administrator de bonis non as aforesaid, but to do so have hitherto wholly neglected and refused, and still neglect and refuse, to the damage of said plaintiff, for the use as aforesaid, in the sum of sixty thousand dollars, wherefore plaintiff brings suit, and now asks
7 judgment for said sum of sixty thousand dollars together with interest and costs of suit, and the said William W. Griffin brings into court here his letters of administration, duly granted, which give sufficient evidence to the court that he is administrator of the said Charles S. Hinckley, deceased.

S. B. ELKINS,
*Att'y for Plaintiff.*

On which said bill is the following endorsement, to wit:

The Territory of New Mexico for the use, &c., vs. George T. Beall et als. Filed in my office this 8th day of November, 1869. Wm. Breeden, clerk. S. B. Elkins for plaintiff.

And at the same time, and with the foregoing bill, was filed the following copy of bond sued on, which said bond is in the words and figures following, to wit:

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Sepan todos por estas presentes, como yo, George T. Beall,
8 como principal, y Sigmund Seligman, Emanuel Spiegelberg, Abraham Staab, Miguel E. Pino, y Jose Manuel Gallegos, como fiadores, somos tenidos y firmemente obligados asi al Territorio de Nuevo Mejico, en la suma de ciento veinte mil pesos ($120,000 00) al pago de lo cual nos obligamos bien y fielmente, juntos y seperadamente, tanto por nosotros mismos como por nuestros herederos, ejecutores ó administradores.

En fé de lo cual ponemos nuestros nombres y sellos en Santa Fé de

Nuevo Mejico, este dia dos de Noviembre del año del Señor de mil ochocientos sesenta y seis.

La condicion de la arriba obligacion es tal, que por cuante el dicho principal George T. Beall á sido nombrado este dia, por el juez de pruebas de dicho condado, administrador y ejecutor de los bienes del finado Charles S. Hinckley, segun la ultima disposicion testimentaria de d cho finado; ahora si el dicho ejecutor y administrador da cuente, paga y entrega todos los dineros y bienes de la dicha masa a los herederos legales de dicho finado, y ejecuta la ultima voluntad testamentaria de dicho finado, y hace todas las demas cosas relativas a la dicha
9 administracion, como requerido por la ley, ó por orden de la corte de pruebas del condado de Santa Fé, ó cualesquiera otra corte teniendo jurisdiccion en el asunto, entonces y en tal caso, esta fianza seré nula y de ningun valor, de lo contrario, quedará en toda su fuerza y efecto.

| | | |
|---|---|---|
| (Firmado) | GEORGE T. BEALL. | [SELLO.] |
| (Firmado) | A. STAAB. | [SELLO.] |
| (Firmado) | E. SPIEGELBERG. | [SELLO.] |
| (Firmado) | S. SELIGMAN. | [SELLO.] |
| (Firmado) | MIGUEL E. PINO. | [SELLO.] |
| (Firmado) | J. M. GALLEGOS. | [SELLO.] |

[Int. rev. stamp, one dollar, canceled.]

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Yo el infrascrito, escribano de la corte de pruebas, en y por el condado de Santa Fé, en el Territorio de Nuevo Mejico, certifico que la antecedente fianza es una copia verdadera y correcta del original segun se halla enregistrada en el libro letra "B," de registros de letras, fianzas de administradores, etc., paginas 98 y 99 el cual es tenido en esta oficina con tal objecto.

En testimonio de lo cual pongo mi nombre y el sello de dicha
10 corte en Santa Fé, N. M., hoy 28 de Enero, A. D. 1869.

[SEAL.] TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*

And he following is a correct translation of the said bond, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Know all men by these presents, that I, George T. Beall, as principal, and Sigmund Seligman, Emanuel Spiegelberg, Abraham Staab, Miguel E. Pino, and José Manuel Gallegos as securities, are held and firmly bound unto the Territory of New Mexico in the sum of one hundred and twenty thousand dollars, (120,000) for the payment of which we well and faithfully, jointly and seperately, bind ourselves, and also our heirs, executors, or administrators.

In witness of which we place our names and seals, at Santa Fé, New Mexico, this second day of November, in the year of our Lord one thousand eight hundred and sixty six.

The condition of the above obligation is such that whereas the
11 said principal, George T. Beall, has this day been appointed by the probate judge of said county administrator and executor of the estate of Charles S. Hinckley, deceased, according to the last will of the said deceased; now if the said executor and administrator shall account for, pay and turn over all the moneys and property of the

said estate to the legal heirs of the said deceased, and shall execute the last testamentary will of the said deceased, and shall do all other things relative to the said administration, as required by law or by the order of the probate court of the county of Santa Fé, or any other court having jurisdiction in the matter, then and in such case, this bond shall be null and of no effect, otherwise it shall remain in full force and effect.

| | | |
|---|---|---|
| (Signed) | GEORGE T. BEALL. | [SEAL.] |
| (Signed) | A. STAAB. | [SEAL.] |
| (Signed) | E. SPIEGELBERG. | [SEAL.] |
| (Signed) | S. SELIGMAN. | [SEAL.] |
| (Signed) | MIGUEL E. PINO. | [SEAL.] |
| (Signed) | J. M. GALLEGOS. | [SEAL.] |

[Int. rev. stamp, one dollar, cancelled.]

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

12 I, the undersigned, clerk of the probate court in and for the county of Santa Fé, in the Territory of New Mexico, certify that the foregoing bond is a true and correct copy of the original as recorded in book, letter "B," of records of letters, bonds of administrators, etc., pages 98 and 99, which is kept in this office for that purpose.

In testimony whereof I place my name and the seal of the said court at Santa Fé, N. M., this 28th day of January, A. D. 1869.

[SEAL.] TRINIDAD ALARID,
*Clerk of the Probate Court.*

And on which said copy of bond is the following endorsement, to wit: William W. Griffin, adm'r de bonis non, vs. George T. Beall, et als. Copy of bond sued on, filed in my office, this 8th day of November, 1869. Wm. Breeden, clerk.

13 And also at the same time, and with the foregoing petition, was filed the following copy of letters of administration, granted to W. W. Griffin by the hon. probate court of the county of Santa Fé, New Mexico, which said letters of administration are in the words and figures following to wit:

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Por cuanto S. B. Elkins, administrador de los bienes del finado Charles S. Hinckley, ha hecho su resignacion como tal administrador, (y ha sido aceptada por la corte de pruebas de dicho condado,) sin haber administrado todos los bienes de dicho finado; y por cuanto W. W. Griffin ha presentado una peticion pidiendo ser nombrado administrador de bonis non de dicho estado, habiendo recomendado por el administrador cesante, y algunos herederos, de dicho finado, y por cuanto ha prestado el debido juramento y dado los correspondientes fianzas por el fiel cumplimiento de sus deberes, como tal administrador; por lo tanto el Honorable Antonio Ortiz y Salazar, juez de pruebas en y por el condado de
14 Santa Fé, en el Territorio de Nuevo Mejico, ha nombrado y por estas presentes nombrá y declará al referido W. W. Griffin, residente del condado y Territorio arriba dicho, administrador de bonis non de todos y cada uno de los bienes, dineros, creditas propriedades y pertenencias del estado del finado Charles S. Hinckley, que no estan ann

Nuevo Mejico, este dia dos de Noviembre del año del Señor de mil ochocientos sesenta y seis.

La condicion de la arriba obligacion es tal, que por cuante el dicho principal George T. Beall á sido nombrado este dia, por el juez de pruebas de dicho condado, administrador y ejecutor de los bienes del finado Charles S. Hinckley, segun la ultima disposicion testimentaria de d cho finado; ahora si el dicho ejecutor y administrador da cuenta, paga y entrega todos los dineros y bienes de la dicha masa a los herederos legales de dicho finado, y ejecuta la ultima voluntad testamentaria de dicho finado, y hace todas las demas cosas relativas a la dicha
9 administracion, como requerido por la ley, ó por orden de la corte de pruebas del condado de Santa Fé, ó cualesquiera otra corte teniendo jurisdiccion en el asunto, entonces y en tal caso, esta fianza seré nula y de ningun valor, de lo contrario, quedará en toda su fuerza y efecto.

| | | |
|---|---|---|
| (Firmado) | GEORGE T. BEALL. | [SELLO.] |
| (Firmado) | A. STAAB. | [SELLO.] |
| (Firmado) | E. SPIEGELBERG. | [SELLO.] |
| (Firmado) | S. SELIGMAN. | [SELLO.] |
| (Firmado) | MIGUEL E. PINO. | [SELLO.] |
| (Firmado) | J. M. GALLEGOS. | [SELLO.] |

[Int. rev. stamp, one dollar, canceled.]

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Yo el infrascrito, escribano de la corte de pruebas, en y por el condado de Santa Fé, en el Territorio de Nuevo Mejico, certifico que la antecedente fianza es una copia verdadera y correcta del original segun se halla enregistrada en el libro letra "B," de registros de letras, fianzas de administradores, etc., paginas 98 y 99 el cual es tenido en esta oficina con tal objecto.

En testimonio de lo cual pongo mi nombre y el sello de dicha
10 corte en Santa Fé, N. M., hoy 28 de Enero, A. D. 1869.

[SEAL.] TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*

And he following is a correct translation of the said bond, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Know all men by these presents, that I, George T. Beall, as principal, and Sigmund Seligman, Emanuel Spiegelberg, Abraham Staab, Miguel E. Pino, and José Manuel Gallegos as securities, are held and firmly bound unto the Territory of New Mexico in the sum of one hundred and twenty thousand dollars, (120,000) for the payment of which we well and faithfully, jointly and seperately, bind ourselves, and also our heirs, executors, or administrators.

In witness of which we place our names and seals, at Santa Fé, New Mexico, this second day of November, in the year of our Lord one thousand eight hundred and sixty six.

The condition of the above obligation is such that whereas the
11 said principal, George T. Beall, has this day been appointed by the probate judge of said county administrator and executor of the estate of Charles S. Hinckley, deceased, according to the last will of the said deceased; now if the said executor and administrator shall account for, pay and turn over all the moneys and property of the

said estate to the legal heirs of the said deceased, and shall execute the last testamentary will of the said deceased, and shall do all other things relative to the said administration, as required by law or by the order of the probate court of the county of Santa Fé, or any other court having jurisdiction in the matter, then and in such case, this bond shall be null and of no effect, otherwise it shall remain in full force and effect.

| | | |
|---|---|---|
| (Signed) | GEORGE T. BEALL. | [SEAL.] |
| (Signed) | A. STAAB. | [SEAL.] |
| (Signed) | E. SPIEGELBERG. | [SEAL.] |
| (Signed) | S. SELIGMAN. | [SEAL.] |
| (Signed) | MIGUEL E. PINO. | [SEAL.] |
| (Signed) | J. M. GALLEGOS. | [SEAL.] |

[Int. rev. stamp, one dollar, cancelled.]

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

12 I, the undersigned, clerk of the probate court in and for the county of Santa Fé, in the Territory of New Mexico, certify that the foregoing bond is a true and correct copy of the original as recorded in book, letter "B," of records of letters, bonds of administrators, etc., pages 98 and 99, which is kept in this office for that purpose.

In testimony whereof I place my name and the seal of the said court at Santa Fé, N. M., this 28th day of January, A. D. 1869.

[SEAL.] TRINIDAD ALARID,
*Clerk of the Probate Court.*

And on which said copy of bond is the following endorsement, to wit: William W. Griffin, adm'r de bonis non, vs. George T. Beall, et als. Copy of bond sued on, filed in my office, this 8th day of November, 1869. Wm. Breeden, clerk.

13 And also at the same time, and with the foregoing petition, was filed the following copy of letters of administration, granted to W. W. Griffin by the hon. probate court of the county of Santa Fé, New Mexico, which said letters of administration are in the words and figures following to wit:

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Por cuanto S. B. Elkins, administrador de los bienes del finado Charles S. Hinckley, ha hecho su resignacion como tal administrador, (y ha sido aceptada por la corte de pruebas de dicho condado,) sin haber administrado todos los bienes de dicho finado; y por cuanto W. W. Griffin ha presentado una peticion pidiendo ser nombrado administrador de bonis non de dicho estado, habiendo recomendado por el administrador cesante, y algunos herederos, de dicho finado, y por cuanto ha prestado el debido juramento y dado los correspondientes fianzas por el fiel cumplimiento de sus deberes, como tal administrador; por lo tanto el Honorable Antonio Ortiz y Salazar, juez de pruebas en y por el condado de
14 Santa Fé, en el Territorio de Nuevo Mejico, ha nombrado y por estas presentes nombrá y declará al referido W. W. Griffin, residente del condado y Territorio arriba dicho, administrador de bonis non de todos y cada uno de los bienes, dineros, creditas propriedades y pertenencias del estado del finado Charles S. Hinckley, que no estan ann

administradas que eran de dicho finado al tiempo de su muerte, entendido que el dicho administrador debe dar cuenta de ellos, a esta corte cada nu año hasta la conclusion de su administracion, como requerido por la ley, ó por orden de esta corte, ó cualesquiera otra corte teniendo jurisdiccion en el asunto.

En testimonio de lo cual pongo mi nombre y el sello de la corte de pruebas de dicho condado en Santa Fé, N. M., hoy el dia 30 de Octubre, A. D. 1869.

[SEAL.] TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Yo el infrascrito escribano, de la corte del condado de Santa Fé, en dicho Territorio, certifico, que las antecedentes letras de administracion han sido enregistradas por mi, hoy el dia 30 du Octubre, A. D. 1869, en el libro letra "B," de registros de letras de administracion, fianzas, etc., paginas 216 y 217 tenido en esta oficina con tal objeto.

En testimonio de lo cual pongo mi nombre y el sello de dicha corte en Santa Fé, N. M., hoy el dia 30 de Octubre, A. D. 1869.

[SEAL.] TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*

Of which said letters of administration the following is a correct translation, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Whereas S. B. Elkins, administrator of the estate of the deceased Charles S. Hinckley, has resigned as such administrator (and has been accepted by the probate court of said county) without having administered upon all the effects of said deceased; and whereas W. W. Griffin has presented a petition asking to be appointed administrator de bonis non of said estate, and being recommended by the retiring administrator and some of the heirs of the said deceased; and whereas he has taken the required oath and given the proper bonds for the faithful performance of his duties as such administrator; therefore, the Honorable Antonio Ortiz y Salazar, probate judge in and for the county of Santa Fé, in the Territory of New Mexico, has appointed, and by these presents appoints and confirms, the aforesaid W. W. Griffin, a resident of the county and Territory aforesaid, administrator de bonis non of all and every one of the goods, moneys, credits, properties, and appurtenances of the estate of the deceased Charles S. Hinckley that are not already settled, and that belonged to said deceased at the time of his death—it being understood that the said administrator shall render account of them to this court each year, until the close of his administration, as required by law, or by order of this court, or any other court having jurisdiction in the matter.

In testimony whereof I place my name and the seal of the probate court of said county, at Santa Fé, N. M., this 30th day of October, A. D. 1869.

[SEAL.] TRINIDAD ALARID,
*Clerk of the Probate Court.*

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

17 I the undersigned clerk of the court of the county of Santa Fé, in said Territory, certify that the foregoing letters of administration have been recorded by me this 30th day of October, A. D. 1869, in the book, letter "B," of records of letters of administration, bonds, etc., pages 216 and 217, kept in this office for such purposes.

In testimony whereof I place my name and the seal of said court, at Santa Fé, this 30 day of October, A. D. 1869.

[SEAL.] TRINIDAD ALARID,
*Clerk of the Probate Court.*

On which letters of administration is the following endorsement, to wit:

The Territory of New Mexico, for the use, &c., vs. George T. Beall et als. Filed in my office this 8th day of November, 1869. Wm. Breeden, clerk.

18

19 And also at the same time with the foregoing petition was filed the following copy of inventory, containing the property of the late Charles S. Hinckley, which is in the words and figures following, to wit:

*Inventory containing the property of the late Charles S. Hinckley, commenced and made this tenth day of January,* 1867.

The property rights and credits of the said deceased Charles S. Hinckley, so far as the undersigned executor has been able to obtain a knowledge thereof, were, at the time of his decease, as follows:

The firm or partnership of which he was a member with Charles H. Blake and W. V. B. Wardwell, at Fort Craig and other places in this Territory, were owing and due the said deceased the sum of forty-six thousand five hundred and thirty-eight dollars and sixty cents. The undersigned, being satisfied that the sum stated is correct, has agreed to receive of the said Charles H. Blake and W. V. B. Wardwell, in full discharge of the capital and profits of the said deceased, the
20 aforesaid sum. The said Blake and Wardwell have agreed to pay the said sum as soon as they can arrange their affairs to do so, and within a reasonable time.

The undersigned is satisfied that the said arrangement is the best he could make for the interest of the estate, and that the payment will be made in due time.

The undersigned states that the deceased departed this life owning nine hundred and seventeen shares in the Bay State Pinos Altos Mining Company, which are of the value of from three to five dollars per share, more or less; also, Asa B. Carey was indebted to him in the sum of fifteen hundred dollars, by virtue of the note conditioned to be paid when it should be convenient for the said Asa B. Carey to pay the same; also a note drawn by Asa B. Carey in favor of Charles S. Hinckley or order, for the sum of four hundred and sixty-nine dollars and thirty-four cents; also a note drawn by Wardwell and Watts, June 1st, 1866, in favor of George T. Beall, for the sum of four thousand eight hundred and seventy-seven dollars and twenty-four cents, with interest from date at twelve per cent. per annum, said note being the

21 property of Charles S. Hinckley and Charles H. Blake, therefore half of the amount of the note belongs to the estate of the late Charles S. Hinckley. He also left the following goods and chattels, to wit: One bedstead, two wool mattresses, two pictures, two chairs, one book-case and books and wardrobe, one washstand, one wash-basin and pitcher, two pair blankets, one carpet, two tables, and one table-cover; the value of the said articles are not given, for by the last will and testament of the deceased were specially bequeathed to persons therein mentioned, and are in the hands of the undersigned to be delivered to the persons having a right to the same. The undersigned has not received into his hands any moneys belonging to the said estate, nor does he expect to receive any until payment shall be made by the said Wardwell and Blake, Asa B. Carey, and Wardwell and Watts, or sale to be made of the aforementioned mining shares.

The deceased also left one undivided twelfth interest in the Cañon del Agua and San Pedro grants, which has been bequeathed in the said will and testament. The value of said interest the undersigned is
22 unable to state. He is also unable to state the amount due by the deceased at the time of his death, and which is to be paid out of said estate, but from the best of his information and belief, the amount of said debts, bequests made in the will, the last illness and funeral expenses, and those of settling the estate, will considerably exceed the whole value of said estate, while he is satisfied that the entire legacies cannot be paid as specified in the will, there will be a large surplus exceeding all the debts, costs, and charges.

GEORGE T. BEALL,
*Executor.*

This inventory was terminated this day of January, 1867. Signed at Santa Fé, New Mexico, by George T. Beall, executor.

On which said inventory is the following endorsement, to wit:

W. W. Griffin, adm'r de bonis non, vs. George T. Beall et als. Copy inventory. Copy to be used on trial. Filed in my office this 8th day of November, 1869. Wm. Breeden, clerk.

23 And be it remembered that afterwards, to wit, on the ninth day of November, 1869, the following writ of summons was issued, which said writ is in the words and figures following, to wit:

The Territory of New Mexico, to the sheriff of the county of Santa Fé, greeting:

You are hereby commanded to summon George T. Beall, Abraham Staab, José Manuel Gallegos, Sigmund Seligman, Emanuel Spiegelberg, and Luz Ortiz de Pino, administratrix of the estate of Miguel E. Pino, deceased, to be and appear before the district court for the first judicial district of the Territory of New Mexico, on the first day of the next term thereof, to be begun and held within and for the county of Santa Fé, at the court-house of said county, on the third morning of February, A. D. 1870, then and there to answer unto the Territory of New Mexico for the use of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased, in an action of debt to the damage of the said plaintiff, for the use as aforesaid, sixty thousand dollars, together with interest and cost of suit. And have you then and there this writ.

24 Witness the Hon. Joseph G. Palen, chief justice of the supreme court of said Territory, and judge of the first judicial district court thereof, and the seal of said court, at Santa Fé, this 9th day of November, A. D. 1869.

[SEAL.] WM. BREEDEN, *Clerk.*

This is an action of debt founded on a bond made by said defendant, George T. Beall, as administrator and executor of the estate of Charles S. Hinckley, deceased, as principal, and on which bond the defendants, Abraham Staab, Emanuel Spiegelberg, Sigmund Seligman, José Manuel Gallegos, and Miguel E. Pino, in his life time were securities. Said bond bears date November 2, 1866. Damages claimed, sixty thousand dollars, together with interest and costs of suit.

WM. BREEDEN, *Clerk.*

On which said writ is the following endorsement, to wit:

The Territory of New Mexico for the use, &c., vs. George T. Beall et al. Debt. Summons. I certify that I have served the within summons upon George T. Beall on the 13th day of November, 1869, and
25 upon Abraham Staab, José Manuel Gallegos, Sigmund Seligman, and Luz Ortiz de Pino on the 10th day of November, 1869, by delivering to each of the above-named party a true copy of the within summons. Emanuel Spiegelberg was not served, he being a non-resident of the county or Territory. Returned this 13th day of November, 1869. John Townsend, dep'y sheriff.

Be it remembered that on Wednesday, the 2d day of March, A. D. 1870, being the ninth day of the February, A. D. 1870, term of the United States district court for the first judicial district of the Territory of New Mexico, sitting in and for the county of Santa Fé, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

THE TERRITORY OF NEW MEXICO, FOR THE use of W. W. Griffin, administrator de bonis non of the estate and effects of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL, ET ALS. } Debt.

26 Now came on to be heard the demurrer of the said defendants to plaintiffs' petition herein, which said demurrer is in the words and figures following, to wit:

Santa Fé district court, February term, 1870.

TERRITORY OF NEW MEXICO, FOR THE USE of William W. Griffin, adm'r de bonis non of the estate of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ Manuel Gallegos, Sigmund Seligman, Emanuel Spiegelberg, and Luz Ortiz de Pino, adm'x of the estate of Miguel Pino, deceased.

And the said defendants, George T. Beall, Abraham Staab, José Manuel Gallegos, Sigmund Seligman, and Luz Ortis de Pino, by Benedict

and Clever their attorneys, come and defend the wrong and injury, when, &c., and say that the said petition and the matters therein contained, in manner and form as the same are above stated and set forth, are most sufficient in law to have or maintain the aforesaid action
27 thereof against the said defendants, and they, the said defendants, are not bound by law to answer the same. And this they are ready to verify; wherefore, by reason of the insufficiency of the said petition in this behalf, the said defendants pray judgment and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against them, &c.

And the said defendants state and show to the court here the following causes of demurrer to the said petition, that is to say, in the said petition and suit Luz Ortiz de Pino, administratrix of Miguel Pino, deceased, is joined as one of the defendants in this action.

And for that the breaches assigned in said petition show no ground upon which said Griffin as ad'r de bonis non, &c., can in law sue for the forfeiture and damages for his use and benefit.

And for that the breach assigned as to the intent of the said Hinckley being and continuing in the hands of the survivors of the partnership mentioned, affords no ground for the forfeiture of the said bond, because the administration and winding up of the entire affairs of said partership belonged in law to the surviving partners.

28 And for that the said breach in no manner shows why the said adm'r de bonis non has not full remedy as such by process of law for the recovery of the entire interests of the said estate in the said partnership, from the survivors.

And for that the said breach shows no money or other property to have come to the hands of the said George T. Beall, as administrator, nor does it show that the affairs of said partnership, the debts paid and the balances remaining in the concern for distribution among the partners or their legal representatives.

And for that the said breach shows that among the interest of the said partnership were mines and lands, but does not show what proportion of the assests of said partnership consisted of such property.

And these defendants aver that by no verbal agreement or contract whatever could the said Beall, as executor, divert the said estate of its interest in the said lands and mines, and that the same as to any showing in the said breach remains as perfect to-day as upon that of the death of the said Hinckley.

29 And for that the other breaches assigned in the said petition are vague, indefinite, and uncertain, and point out and specify none of the definite acts of management of the estate of the said Hinckley by the said Beall, executor, from which any losses occurred.

And for that the said breaches give no information as to what points or parts of the conduct of the said Beall, as executor, these defendants are required to prepare themselves to answer and defend, &c.

BENEDICT & CLEVER,
*Atty's for these Def't's.*

On which said demurrer is the following endorsement, to wit:

W. W. Griffin, ad'r, vs. George T. Beall and others, demurrer. Filed in my office this 1st day of March, 1870. W. Breeden, clerk.

And the same being argued by counsel, and the court not being sufficiently advised in the premises, takes said demurrer under ad
30 visement.

And be it further remembered that afterwards, to wit, on Thursday the third day of March, 1870, being the tenth day of the February, A. D. 1870, term of the said district court for the first judicial district of the Territory of New Mexico, sitting in and for the county of Santa Fé, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

THE TERRITORY OF NEW MEXICO, FOR THE use of W. W. Griffin, administrator de bonis non of the estate of C. S. Hinckley, deceased, *vs.* GEORGE T. BEALL, ET ALS. } Debt.

The demurrer of the said defendants, by their attorneys, to the petition of the said plaintiff, having been argued and submitted on a former day of this term, and having then been taken under advisement by the court, and the court being now sufficiently advised in the premises, overrules said demurrer, to which ruling and decision of the court the defendants by their attorneys except.

31 And be it further remembered that afterwards, to wit, on Thursday the third day of March, A. D. 1870, being the tenth day of the February, A. D. 1870, term of the U. S. district court for the first judicial district of the Territory of New Mexico, sitting in and for the county of Santa Fé, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

THE TERRITORY OF NEW MEXICO, FOR THE use of W. W. Griffin, administrator de bonis non of the estate of C. S. Hinckley, deceased, *vs.* GEORGE T. BEALL AND OTHERS. } Debt.

And now comes said plaintiff by Mr. Elkins, his attorney, and moves the court to amend the petition herein by striking out the name of Luz Ortiz de Pino, administratrix of the estate of Miguel Pino, deceased, which said motion is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, FOR USE, &C., *vs.* GEORGE T. BEALL AND OTHERS.

And now comes the plaintiff, by her attorney, and moves the court to amend the petition herein by striking out the name of Luz Pino,
32 administratrix of Miguel Pino.

S. B. ELKINS,
*For motion.*

On which said motion is the following endorsement, to wit:
Territory of New Mexico, &c. vs. George T. Beall et als. Motion. Filed in open court this 2d day of March, 1870. Wm. Breeden, clerk.

Which motion is sustained by the court and leave is granted to said plaintiff to so amend his petition herein, to which ruling and decision of the court the defendants by their attorneys except.

And be it further remembered that afterwards, to wit, on Thursday, the 3d day of March, A. D. 1870, being the tenth day of the February, A. D. 1870, term of the United States district court for the first judicial district of the Territory of New Mexico, sitting in and for the county of Santa Fé, the following proceedings were had which said proceed-
33 ings are in the words and figures following, to wit:

THE TERRITORY, FOR THE USE OF W. W. Griffin, administrator de bonis non of the estate and effects of C. S. Hinckley, deceased, *vs.* GEORGE T. BEALL AND OTHERS. } Debt.

And now comes the said defendants by their attorneys, and move the court for a rule on the said plaintiff to require him to file a statement of the particular acts of negligence upon which he intends to rely and give in evidence on the trial of this cause, which said motion is in the words and figures following, to wit:

Dis. court, Feb. term, 1870.

THE TERRITORY, FOR USE OF WM. W. Griffin, *vs.* GEORGE T. BEALL AND OTHER.

The def'ts by their att'y move the court that the plaintiff file a notice of the particular acts of negligence or neglect they, the plaintiff, intends to rely upon and give evidence on in the trial of this cause.

KIRBY BENEDICT,
*Att'y for Def'ts.*

34 On which said motion is the following endorsement, to wit:
Wm. W. Griffin vs. Geo. T. Beall and others. Filed in open court this 3d day of March, 1870. Wm. Breeden, clerk.

Which motion is overruled by the court.

And be it further remembered that afterwards, to wit. on Friday, the fourth day of March, A. D. 1870, being the eleventh day of the February, A. D. 1870, term of the United States district court for the first judicial district of the Territory of New Mexico, sitting in and for the county of Santa Fé, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

THE TERRITORY OF NEW MEXICO, FOR THE use of W. W. Griffin, administrator de bonis non of the estate of the late C. S. Hinckley, deceased, *vs.* GEORGE T. BEALL AND OTHERS. } Debt.

This day came on to be heard the demurrer of the said defend-
35 ants to the amended petition herein, which said demurrer is in the words and figures following, to wit:

Santa Fé district court, February term, 1870.

THE TERRITORY OF NEW MEXICO, FOR THE use and benefit of W. W. Griffin, ad'r, &c.,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, Sigmund Seligman, and José Manuel Gallegos.

And the said defendants, by Benedict and Clever, their attorneys, come and defend the wrong and injury, when, &c., and say that the said petition as amended, and the matters therein contained in manner and form as the same are therein set forth, are not sufficient in law for the said plaintiff to have or maintain the aforesaid action thereof against the said defendants, and they, the said defendants, are not bound by law to answer the same, and this they are ready to verify, wherefore they pray judgment, &c.

Said defendants show to the court the following special causes of demurrer, to wit:

Said petition shows no grounds upon which the said Griffin as ad'r de bonis non is entitled to prosecute this suit. And for that the
36 said petition is indefinite, vague, and uncertain in its allegations and charges of negligence, &c., against the said George T. Beall as executor, &c., and said petition is in other respects informal, uncertain, insufficient, &c.

BENEDICT AND CLEVER,
*Def'ts' Att'ys.*

On which said demurrer is the following endorsement, to wit:

W. W. Griffin, ad'r, &c. vs. George T. Beall and others. Demurrer to amended petition. Filed in open court this 4th day of March, 1870. Wm. Breeden, clerk.

Which demurrer being argued by counsel, and the court being sufficiently advised in the premises, overrules said demurrer.

And be it further remembered that heretofore, to wit, on the third day of March, A. D. 1870, being the tenth day of the said February, A. D. 1870, term of the said district court, the following plea in abatement was filed in open court, which said plea is in the words and figures following, to wit:

37 Santa Fé district court, February term, 1870.

THE TERRITORY OF NEW MEXICO, FOR THE use and benefit of W. W. Griffin, ad'r de bonis non of the estate of Charles S. Hinckley,
*vs.*
GEORGE T. BEALL, ABRAHAM STABB, Sigmund Seligman, José M. Gallegos, Luz Ortiz de Pino, ad'x of the estate of Miguel Pino, deceased, and Emanuel Spiegelberg.

And the said defendant, Luz Ortiz de Pino, administratrix of the estate of Miguel Pino, deceased, comes and defends the wrong and injury when, &c., and prays judgment of the said petition of said plaintiff; because she says that the said writing obligatory, if made, was made

jointly by the said George T. Beall, Abraham Staab, Sigmund Seligman, José Manuel Gallegos, Miguel Pino, and Emanuel Spiegelberg, and that after making the same, and before the commencement of this suit, the said Miguel Pino departed this life, and this said defendant was
38 duly appointed administratrix of the estate of the said Miguel Pino, deceased, and was such at the time of the commencement of this suit, and still is, to wit, at, &c., and this she, the said defendant, is ready to verify; wherefore, because she, the said Luz Ortiz de Pino, administratrix, as aforesaid, is named a defendant together with the said other defendants in the said petition, she prays judgment of the same, and that the same may be quashed, &c.

KIRBY BENEDICT,
*Att'y for Def't.*

On which said plea is the following endorsement, to wit:

W. W. Griffin, ad'r, &c., vs. George T. Beall, et als. Plea in abatement. Luz Ortiz de Pino, ad'x, &c. Filed in open court this 3d day of March, 1870. Wm. Breeden, clerk, by M. A. Breeden, deputy.

And be it further remembered, that afterwards, to wit, on Friday, the 4th day of March, 1870, being the 11th day of the February, A.
39 D. 1870, term of the said district court for the said Territory of New Mexico, the following pleas to amended petition and replication thereto were filed, and which are in the words and figures following, to wit:

Santa Fé district court, February term, 1870.

THE TERRITORY OF NEW MEXICO, FOR THE use and benefit of W. W. Griffin, ad'r, &c.,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, Sigmund Seligman, and José Manuel Gallegos.

And the said defendants, by Benedict and Clever, their attorneys, come and defend the wrong and injury when, &c., and say that they do not owe the said sum of money above demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them; and of this the said defendants put themselves upon the country, &c.

And the said plaintiff doth the like.

S. B. ELKINS,
*Att'y for Plaintiff.*

40 And for a further plea in this behalf, the said defendants say actio non, because they say that the said George T. Beall, executor, as aforesaid, defendant did, from time to time, and at all times after the making of the said writing obligatory, and the said condition thereof, well and truly observe, perform, fulfil, and keep all and singular the duties, payments, conditions, and agreements in the said condition of the said writing obligatory, specified, comprised, and mentioned in all things therein contained on his part and behalf to be observed, performed, fulfilled, and kept, according to the tenor and effect, true intent and meaning of the said condition of the said writing obligatory. And this the said defendants are ready to verify, wherefore they pray judgment, &c.

And for a further plea in this behalf, the said defendants say actio

non, because they say the said George T. Beall, executor, as in said petition mentioned, at and in the probate court, within and for the county of Santa Fé, on the 26th day of January, 1869, did present himself with his account as such executor for settlement, and which account on the
41 27th day of January, 1869, was duly approved and confirmed by the said probate court; and that afterwards, to wit, on the day of , 1869, the said George T. Beall duly resigned the said office and duties as executor, as aforesaid, and the said resignation was by the said probate court in due form accepted, and the said George T. Beall, as executor aforesaid, discharged from further duties and liabilities of, to, and for the estate of the said said Charles S. Hinckley, deceased. And this the said defendants are ready to verify; wherefore they pray judgment, &c.

BENEDICT & CLEVER,
*Def't's Att'ys.*

On which said pleas is the following endorsement, to wit:
W. W. Griffin, ad'r, &c., vs. George T. Beall and others. Pleas to amended petition. Filed in open court this 4th day of March, 1870. Wm. Breeden, clerk.

| | |
|---|---|
| TERRITORY OF NEW MEXICO, FOR THE USE, &c., *vs.* GEORGE T. BEALL ET ALS. | Assumpsit. |

42 And the said plaintiff, as to the said plea of the said defendants, by them (secondly) above pleaded, saith that the said plaintiff, by reason of anything by the said defendant to that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendants, because said plaintiff says that said George T. Beall, executor, as aforesaid, did not from time to time, and at all times, after the making of the said writing obligatory, as the said condition thereof, well and truly observe, perform, fulfil, and keep all and singular the duties, payments, conditions, and agreements in the said conditions of the said writing obligatory, specified, comprised, and mentioned in all things therein contained, on his part and behalf to be observed, performed, fulfilled, and kept, according to the tenor, effect, true intent, or meaning of the said condition of the said writing obligatory, and of this the plaintiff puts itself upon the country. And the defendants doth the like.

BENEDICT & CLEVER,
*For Def'ts.*

And the said plaintiff, as to the said plea of the said defendants, by them (thirdly) above pleaded, says precludi non, because plain-
43 tiff says that said defendant, George T. Beall, executor, as aforesaid, did not present his accounts to the probate court for settlement, nor were the said accounts duly approved or confirmed as in said plea stated, nor was said defendant, George T. Beall, executor, as aforesaid, discharged from all liabilities to said estate, as in said plea stated and set forth, and of this the plaintiff puts itself upon the country.

S. B. ELKINS,
*Att'y for Plaintiff.*

And the def'ts do the like.

BENEDICT & CLEVER,
*For Def'ts.*

On which said replication is the following endorsement, to wit: Territory of New Mexico, for use, &c., vs. George T. Beall et als., replication to 2d & 3d pleas filed in open court this 4th day of March, 1870. Wm. Breeden, clerk.

And be it remembered that heretofore, to wit, on the 3d day of
44 March, A. D. 1870, the following bill of exceptions was filed, which said bill of exceptions is in the words and figures following, to wit:

Dis. court, Feb. term, 1870.

THE TERRITORY, FOR THE USE AND BENEFIT of William W. Griffin,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, SIGMUND Seligman, José Manuel Gallegos, Luz Ortiz de Pino, administratrix of the estate of Miguel Pino, deceased, and Emanuel Spiegelberg.

Be it remembered that the following demurrer came to be heard in this case, to wit:

Santa Fé district court, February term, 1870.

TERRITORY OF NEW MEXICO, FOR THE USE OF William W. Griffin, ad'r de bonis non of the estate of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ Manuel Gallegos, Sigmund Seligman,
45 Emanuel Spiegelberg, and Luz Ortiz de Pino, ad'x of the estate of Miguel Pino, deceased.

And the said defendants, George T. Beall, Abraham Staab, José Manuel Gallegos, Sigmund Seligman, and Luz Ortiz de Pino, by Benedict and Clever, their attorneys, come and defend the wrong and injury when, &c., and say that the said petition, and the matter therein contained in manner and form as the same are above stated and set forth, are not sufficient in law to have or maintain the aforesaid action thereof against the said defendants, and they, the said defendants, are not bound by law to answer the same; and this they are ready to verify. Wherefore, by reason of the insufficiency of the said petition in this behalf, the said defendants pray judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against them, &c.

And the said defendants state and show to the court here the following causes of demurrer to the said petition, that is to say, in the said petition and suit, Luz Ortiz de Pino, administratrix of Miguel Pino, deceased, is joined as one of the defendants in this action. And
46 for that the breaches assigned in said petition show no ground upon which said Griffin, as ad'r de bonis non, &c., can in law sue for the forfeiture and damages for his use and benefit.

And for that the breach assigned as to the interest of the said

Hinckley, being and continuing in the hands of the survivors of the partnership mentioned, affords no ground for the forfeiture of the said bond, because the administration and winding up of the entire affairs of said partnership belonged in law to the surviving partners.

And for that the said breach in no manner shows why the said ad'r de bonis non has not full remedy as such by process of law for the recovery of the entire interests of the said estate in the said partnership from the survivors.

And for that the said breach shows no money or other property to have come to the hands of the said George T. Beall as administrator, nor does it show that the affairs of said partnership, the debts paid, and the balance remaining in the concern for distribution among the partners or their legal representatives.

47 And for that the said breach shows that among the interests of the said partnership were mines and lands, but does not show of what proportion of the assets of said partnership consisted of such property.

And these defendants aver, that by no verbal agreement or contract whatever could the said Beall, as executor, divest the said estate of its interest in the said lands and mines, and that the same as to any showing in the said breach remains as perfect to-day as upon that of the death of the said Hinckley.

And for that the other breaches assigned in the said petition are vague, indefinite, and uncertain, and point out and specify none of the definite acts of management of the estate of the said Hinckley by the said Beall, executor, from which any losses occurred.

And for that the said breaches give no information as to what points or parts of the conduct of the said Beall as executor, these defendants are required to prepare themselves to answer and defend, &c.

BENEDICT AND CLEVER,
*Atty's for these Def'ts.*

On which said demurrer is the following endorsement, to wit:

48 W. W. Griffin, ad'r, vs. George T. Beall and others. Demurrer. Filed in my office this 1st day of March, 1870. W'm Breeden, clerk.

And the court, upon the hearing of the same, did overrule the said demurrer, to which decision and judgment of the court the said defendants except. The said Emanuel Spiegelberg did then and there except, and pray that this his bill of exceptions be now signed and sealed by the court, which is done accordingly.

J. G. PALEN, *C. J., &c.* [SEAL.]

On which said bill of exceptions is the following endorsement, to wit: The Territory, use of Griffin, &c., vs. George T. Beall and others. Exceptions upon overruling demurrer, filed in open court this 3d day of March, 1870. W'm Breeden, clerk, by M. A. Breeden, deputy.

And afterwards, to wit, on the 4th day of March, A. D. 1870, the

49 following bill of exceptions was filed, which is in the words and figures following, to wit:

Santa Fé County district court, February term, 1870.

THE TERRITORY OF NEW MEXICO, FOR THE use and benefit of W. W. Griffin, ad'r, &c.,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, Sigmund Seligman, Jose Manuel Gallegos, Luz Ortiz de Pino, ad'r'x, &c., and Emanuel Spiegelberg.

Be it remembered, that in the course of proceedings in this cause all of said defendants except the said Emanuel Spiegelberg filed their demurrer herein to the said petition, and which is in the words following, to wit:

Santa Fé district court, February term, 1870.

TERRITORY OF NEW MEXICO, FOR THE USE of William W. Griffin, ad'r de bonis non of the estate of Charles S. Hinckley, deceased,
*vs.*
50 GEORGE T. BEALL, ABRAHAM STAAB, Jose Manuel Gallegos, Sigmund Seligman, Emanuel Spiegelberg, and Luz Ortiz de Pino, ad'x of the estate of Miguel Pino, deceased.

And the said defendants George T. Beall, Abraham Staab, Jose Manuel Gallegos, Sigmund Seligman, and Luz Ortiz de Pino, by Benedict and Clever, their attorneys, come and defend the wrong and injury when, &c., and say that the said petition, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law to have or maintain the aforesaid action thereof against the said defendants, and they, the said defendants, are not bound by law to answer the same; and this they are ready to verify. Wherefore, by reason of the insufficiency of the said petition in this behalf, the said defendants pray judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against them, &c.

And the said defendants state and show to the court here the
51 following causes of demurrer to the said petition, that is to say, in the said petition and suit, Luz Ortiz de Pino, administratrix of Miguel Pino, deceased, is joined as one of the defendants in this action.

And for that the breaches assigned in said petition show no ground upon which said Griffin as ad'r de bonis non, &c., can in law sue for the forfeiture and damages for his use and benefit.

And for that the breach assigned as to the interest of the said Hinckley being and continuing in the hands of the survivors of the partnership mentioned affords no ground for the forfeiture of the said bond, because the administration and winding up of the entire affairs of said partnership belonged in law to the surviving partners.

And for that the said breach in no manner shows why the said ad'r de bonis non has not full remedy as such, by process of law, for the recovery of the entire interests of the said estate in the said partnership from the survivors.

And for that the said breach shows no money or other property to

have come to the hands of the said George T. Beall as administrator; nor does it show that the affairs of said partnership, the debts
52 paid, and the balance remaining in the concern for distribution among the partners, or their legal representatives.

And for that the said breach shows that among the interests of the said partnership were mines and lands, but does not show of what proportion of the assets of said partnership consisted of such property.

And these defendants aver that by no verbal agreement or contract whatever could the said Beall as executor divest the said estate of its interest in the said lands and mines, and that the same, as to any showing in the breach, remains as perfect to-day as upon that of the death of the said Hinckley.

And for that the other breaches assigned in the said petition are vague, indefinite, and uncertain, and point out and specify none of the definite acts of management of the estate of the said Hinckley by the said Beall, executor, from which any losses occurred.

And for that the said breaches give no information as to what points or parts of the conduct of the said Beall as executor these defendants are required to prepare themselves to answer and defend, &c.

53 BENEDICT & CLEVER,
*Att'ys for these Def'ts.*

On which said demurrer is the following endorsement, to wit:
W. W. Griffin, ad'r, vs. George T. Beall and others. Demurrer. Filed in my office this 1st day of March, 1870. W'm Breeden, clerk.

And before the said demurrer was argued by counsel the plaintiff, by his counsel, filed the following motion, in the words, to wit:

TERRITORY OF NEW MEXICO, FOR USE, &C., }
*vs.*
GEORGE T. BEALL AND OTHERS. }

And now comes the plaintiff, by her attorney, and moves the court to amend the petition herein by striking out the name of Luz Pino, administratrix of the estate of Miguel Pino.

S. B. ELKINS,
*For Motion.*

On which said motion is the following endorsement, to wit:
54 Territory of New Mexico, &c., vs. George T. Beall et als. Motion. Filed in open court this 2d day of March, 1870. W'm Breeden, clerk.

After which the respective parties, by their counsel, argued their said cause upon both sides. Whereupon the court overruled the said demurrer, to which decision of the court the said defendants did then and there except, and pray that this their bill of exceptions be signed and sealed by the judge, and made a part of the record in this case.

And be it further remembered, that after the said demurrer had been overruled by the court the said Luz Ortiz de Pino, administratrix as aforesaid, by her counsel, filed her plea in abatement, as follows:

Santa Fé district court, February term, 1870.

THE TERRITORY OF NEW MEXICO, FOR THE use and benefit of W. W. Griffin, ad'r de bonis non of the estate of Charles S. Hinckley, deceased,

*vs.*

55 GEORGE T. BEALL, ABRAHAM STAAB, Sigmund Seligman, Jose M. Gallegos, Luz Ortiz de Pino, adm'x of the estate of Miguel Pino, deceased, and Emanuel Spiegelberg.

And the said defendant, Luz Ortiz de Pino, administratrix of the estate of Miguel Pino, deceased, comes and defends the wrong and injury when, &c., and prays judgment of the said petition of said plaintiff, because she says that the said writing obligatory, if made, was made jointly by the said George T. Beall, Abraham Staab, Sigmund Seligman, Jose Manuel Gallegos, Miguel Pino, and Emanuel Spiegelberg; and that after making the same, and before the commencement of this suit, the said Miguel Pino departed this life, and this said defendant was duly appointed administratrix of the estate of the said Miguel Pino, deceased, and was such at the time of the commencement of this suit, and still is, to wit, at, &c.; and this she, the said defendant, is ready to verify.

Wherefore, because she, the said Luz Ortiz de Pino, adminis-
56 tratrix as aforesaid, is named a defendant together with the said other defendants in the said petition, she prays judgment of the same, and that the same may be quashed, &c.

KIRBY BENEDICT,
*Att'y for Def't.*

On which said plea in abatement is the following endorsement, to wit:

W. W. Griffin, ad'r, &c., vs. George T. Beall et als. Plea in abatement. Luz Ortiz de Pino, ad'x, &c. Filed in open court this 3d day of March, 1870. Wm. Breeden, clerk, by M. A. Breeden, deputy.

And before any action was taken by the court upon the said plea, or the plaintiff had replied or demurred to the same, the court granted the aforesaid motion of the plaintiff to amend the petition by dismissing the said administratrix as a defendant in this cause, and immediately ruled the other defendants to answer on the next day morning, to which ruling and decisions of the court these defendants, by their counsel,
57 did then and there further except; and now pray that this their bill of exceptions be signed and sealed by the court, and made a part of the record in this case, which is done accordingly, jointly with the bill of exceptions above preceeding.

J. G. PALEN, *C. J., &c.* [SEAL.]

On which said bill of exceptions is the following endorsement, to wit: W. W. Griffin, ad'r, &c, vs. George T. Beall and others, filed in open court this 4th day of March, 1870. W'm Breeden, clerk.

And be it remembered that afterwards, to wit, on the 4th day of March, A. D. 1870, the following papers were filed, being the accounts of George

T. Beall, administrator of the estate of Charles S. Hinckley, deceased, which said papers are in the words and figures following, to wit:

*George T. Beall in account with the estate of the late Charles S. Hinckley.*

1867. DR.

| | | | |
|---|---|---|---|
| M'ch | 1. | To amount received from Wardwell & Blake.... | 904 75 |
| " | 8. | " " " " do. do..... | 906 34 |
| 58 April | 2. | To amount received from Col. N. H. Davis. | 20 00 |
| " | 27. | " " " " Wardwell & Blake | 1,169 80 |
| May | 1. | " " " " Wardwell & Watts ... | 300 00 |
| " | 17. | " " " " Wardwell & Blake.... | 879 57 |
| June | 18. | " " " " " " .... | 1,121 91 |
| July | 5. | " " " " Wardwell & Watts... | 250 00 |
| | | | $5,552 37 |

1867. CR.

| | | | |
|---|---|---|---|
| M'ch | 4. | By amount paid Dr. J. C. McKee ..... | 500 00 |
| " | " | " " " Dr. L. W. Kennon..... | 130 00 |
| " | " | " " " Mr. Coffman..... | 84 70 |
| " | " | " " " Funeral expenses ..... | 225 50 |
| " | 8. | " " " Staab & Bro..... | 216 89 |
| " | " | " " " Seligman & Bro ..... | 23 85 |
| " | 9. | " " " R. H. Tompkins ..... | 100 00 |
| " | 12. | " " " Elsberg & Amberg..... | 154 00 |
| April | 27. | " " " U. S. Deputy Collector, for Income tax | 1,169 80 |
| May | 20. | " " " J. Serafin Ramires..... | 1,000 00 |
| June | 18. | " " " N. Hughes on note given in his favor by Hinckley & Blake, for $2,000 00 ..... | 1,000 00 |
| " | 18. | " " of interest paid on the above note ..... | 171 91 |
| Oct. | 17. | " " paid Arthur Latham ..... | 150 00 |
| Dec. | 4. | " " " " " ..... | 354 25 |
| | | " " " George T. Beall as adm'r, on receiving the sum of $5552 $\frac{37}{100}$ at 2½ p'r c't. | 188 80 |
| 59. | Dec. | 4. To amount paid George T. Beall as adm'r for disbursing the sum of $5280 $\frac{90}{100}$ at 2½ p'r c't. | 132 02 |
| 1868. | | | |
| May. | 2. | " " approved by the probate court for special services ..... | 110 00 |
| | | | $5,661 72 |

RECAPITULATION.

| | |
|---|---|
| By amount received ..... | 5,552 37 |
| " " disbursed..... | 5,661 72 |
| To am't due Geo. T. Beall..... | $109 35 |

| 1868. | | |
|---|---|---|
| April 30. | To amount due from Wardwell & Blake ..... | 41,556 25 |
| | " " " " Wardwell & Watts ..... | 2,414 82 |
| | " " " " Asa B. Carey ..... | 1,969 34 |
| | " 917 shares Bay State Pinos Altos Mining Company, present value not known, as there is no market for the same. | |
| | | $45,940 41 |

I have the honor to state for the information of the hon. probate court, that the household furniture mentioned in the inventory furnished January 10th, 1867, were disposed of according to the last will and testament of the late Charles S. Hinckley, and that no disposition has been made of the interest in the Cañon del Agua and San Pedro
60 grants, also mentioned in the inventory. I would also state that the amount due the estate of the late Charles S. Hinckley by W. V. B. Wardwell and Charles H. Blake, that they have promised to settle their indebtedness as soon as the old debts of the concern are paid, said debts having been contracted while the late Charles S. Hinckley was a partner of the concern.

All of which is respectfully submitted.

GEORGE T. BEALL,
*Administrator.*

SANTA FÉ, N. M., *May 4th*, 1868.

TERRITORIO de NUEVO MEJICO,
*Condado de Santa Fé:*

Yo, el infrascrito, administrador y ejecutor de la ultima disposicion testamentaria del finado Charles S. Hinckley, juro solemnamente que el antecedente informe manifiesta la practica de mi administracion del estado de dicho finado, hasta esta fecha lo cual á sido hecho por mi y manifestado segun mi mejor conocimiento.

GEORGE T. BEALL,
*Administrator.*

Juramentado y suscrito ante mi hoy 4 de Mayo, de 1868.
61 TRINIDAD ALARID,
*Esc'b'o de la Corte de P'bas.*

NOTA.—El anticedente informe ha sido aprobado por la hon. corte de pruebas del condado de Santa Fé, vease los procedimientos de dicha corte del dia 4 de Mayo, A. D. 1868.

TRINIDAD ALARID,
*Escribano.*

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Yo, el infrascrito, escribano de la corte de pruebas, en y por el condado de Santa Fé, en el Territorio de Nuevo Mejico, certifico, que el antecedente informe y sus comprobantes han sido enregistrados por mi, hoy el dia 5 de Mayo, A. D. 1868, en el libro letra "C," paginas 362, 363, 364, 365 y 366, el cual es tenido en la oficina de dicha corte con tal objeto.

En testimonio de lo cual pongo mi nombre y el sello de la corte de

pruebas de dicho condado en Santa Fé, N. M., hoy el dia 5 de Mayo, A. D. 1868.

[SEAL.] TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*

62 Of which said affidavit and certificate the following is a correct translation:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I, the undersigned, administrator and executor of the last will of the deceased, Charles S. Hinckley, solemnly swear that the foregoing report exhibits the results of my administration of the estate of said deceased to this date, which has been made by me and exhibited according to the best of my knowledge.

GEORGE T. BEALL,
*Administrator.*

Sworn and subscribed before me this 4th day of May, 1868.

TRINIDAD ALARID,
*Clerk.*

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I, the undersigned, clerk of the probate court in and for the county of Santa Fé, in the Territory of New Mexico, certify that the foregoing report and its vouchers have been recorded by me the 5th day of May, A. D. 1868, in book letter "C," pages 362, 363, 364, 365 and 366,
63 which is kept in the office of the said court for such purpose.

In testimony whereof I place my name and the seal of the probate court of said county at Santa Fé, N. M., this 5th day of May, A. D. 1868.

TRINIDAD ALARID,
*Clerk of the Probate Court.*

On which said paper is the following endorsement, to wit:

The Territory, for the use, &c., vs. Geo. T. Beall et als. Filed in open court this 4th day of March, 1870. W'm Breeden, clerk.

And at the same time and with the foregoing account was filed the following report of George T. Beall, administrator, for the year 1868, to wit:

64 *George T. Beall in account with the estate of the late Charles S. Hinckley.*

| 1868. | | DR. | |
|---|---|---|---|
| | To amount bro't forward from last statement rendered May 4, 1868, and approved by the probate court | | 5,552 37 |
| May 20. | " amount received from Wardwell & Blake | | 135 60 |
| Aug. 6. | " " " " Asa B. Carey | | 469 34 |
| " 24. | " " " " Wardwell & Watts | | 332 40 |
| Nov. 27. | " " " " W. H. Bell; this amount was not mentioned in the inventory rendered to the probate court January 10, 1867 | | 200 00 |
| | | | $6,689 71 |

1868. CR.

| | | |
|---|---|---|
| | By amount bro't forward from last statement rendered May 4, 1868, and approved by the probate court | 5,661 72 |
| May 20. | " amount paid George T. Beall due from last statement rendered May 4, 1868 | 109 35 |
| 65 May 20. | By am't paid clerk probate court | 15 00 |
| " " " | " " " " " | 10 00 |
| Aug. 6. | " " " Arthur Latham on note | 445 88 |
| " 24. | " " " " " " " | 315 80 |
| | | $6,557 75 |

RECAPITULATION.

| | |
|---|---|
| To amount received | 6,689 71 |
| " " disbursed | 6,557 75 |
| To am't due from Geo. T. Beall | $131 96 |
| To am't due from Wardwell & Blake | 41,420 65 |
| " " " " Wardwell & Watts | 2,227 40 |
| " " " " Asa B. Carey | 1,500 00 |
| " 917 shares Bay State Pinos Altos Mining Company, present value not known as there is no market for the same. | |
| | $45,148 05 |

I certify that the foregoing is a true and accurate statement of all moneys received and disbursed by me as administrator to the estate of the late Charles S. Hinckley, deceased, from May 4, 1868, to January 26th, 1869.

Respectfully submitted.

GEO. T. BEALL,
*Administrator.*

SANTA FÉ, NEW MEXICO, *January* 26, 1869.

66 Sworn and subscribed before me this 26th day of January, A. D. 1869.

TRINIDAD ALARID,
*Probate Clerk.*

NOTA.—El antecedente informe fue aprobado por la corte de pruebas, segun consta en los procedimientos de dicha corte del dia 27 de Enero, A. D. 1869.

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Certifico, yo el infrascrito escribano de la corte de pruebas del condado de Santa Fé, en dicho Territorio, que el antecedente informe ha sido enregistrado por mi hoy el dia 1° de Noviembre, A. D. 1869, en el libro

letra C, de registros de informes, etc., paginas 414 y 415, tenido en esta oficina con tal objeto.

En testimonio de lo cual pongo mi nombre y el sello de dicha corte en Santa Fé, N. M., hoy el dia 1° de Noviembre, A. D. 1869.

[SEAL.] TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*

On which said paper is the following endorsement, to wit:

67 The Territory for the use, &c., vs. George T. Beall et als. Filed in open court this 4th day of March, 1870. W'm Breeden, clerk.

Of which said note and certificate the following is a correct translation:

NOTE.—The foregoing report was approved by the probate court, as appears in the proceedings of said court of the 27th day of January, A. D. 1869.

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I, the undersigned, clerk of the probate court of the county of Santa Fé, in said Territory, certify that the foregoing report has been recorded by me this 1st day of November in book, letter "C," of records of reports, etc., pages 414 and 415, kept in this office for that purpose.

68 In testimony whereof I place my name and the seal of the said court, at Santa Fé, N. M., this the 1st day of November, A. D. 1869.

[SEAL.] TRINIDAD ALARID,
*Clerk of the Probate Court.*

69 And afterwards, to wit, on the 5th day of March, A. D. 1870, being the 12th day of the February A. D. 1870 term of the said district court, the following affidavit for continuance was filed, which said affidavit is in the words and figures following, to wit:

Santa Fé district court, February term, 1870.

THE TERRITORY FOR THE USE OF W. W. GRIFFIN, &c.,
*vs.*
GEORGE T. BEALL & OTHERS.

The said George T. Beall, being duly sworn upon his oath, states that the said defendants cannot safely proceed to trial at the present term of this court, on account of the absence of material witnesses, not now present at this term of court, among which is J. R. Hunt, who, to the best of affiant's knowledge and belief, is a resident of the city of New Orleans, in the State of Louisiana, and who has not been in this

70 Territory since the commencement of this suit. This affiant expects to prove that, for more than a year before the death of said Charles S. Hinckley, he was clerk and book-keeper of the firm of Hinckley, Blake and Wardwell, at Fort Craig, in the Territory of New Mexico, and at the time of said death thoroughly knew the condition, business, and circumstances of the said firm, and the interest which the said Hinckley had as to capital, profits, or otherwise, which he had in the said partnership. Affiant also expects to prove, by the said J. R. Hunt, that a short time after the affiant was appointed executor he visited

Fort Craig, for the purpose of examining and ascertaining the interest of the said Hinckley's estate in the said firm. That the books of said firm were presented by Blake and Wardwell, surviving partners of the said firm, and that said J. R. Hunt was the person who represented the survivors in the examination of the papers, stocks, books, property, and all other assets and matters belonging to the said firm. This affiant expects to prove, by the said Hunt, that the sum of forty-six thousand five hundred and thirty-eight dollars and sixty-two cents was the entire amount of interest that appeared, after a full ex-
71 amination, as belonging to the estate of said Charles S. Hinckley. Furthermore, that the said sum was the result of a fair rendition of accounts of the said survivors with this affiant. Furthermore, that this affiant made no sale of the said interest to the said survivors. Furthermore, that the said affiant, in no manner whatever, converted to his or their use the interest of the said Hinckley's estate. Affiant saith that the said Hunt continued as book-keeper in the said business at Fort Craig, N. M., for more than a year after the said examination of the accounts, and then left this Territory and has not returned. Affiant saith that he knows of no other person by whom he can prove the facts hereinabove stated, as to the business of said firm, and condition of said accounts, and showing the interest of said Hinckley in said firm, except the said Hunt. He states that he may be able to prove some parts of the condition of the said firm at the time of said Hinckley's death by other witnesses, but the full condition, with this affiant's transaction with the said survivors, by no other person. Affiant saith that he expects
72 to be able to procure the testimony of the said Hunt by the next term of this court; that no process has been taken out to summon said witness, as the same could not have been served upon said witness, and would have been wholly unavailing; that this application is not made for vexation or delay, but to enable the defendants to make their full and just defence in this cause.

GEORGE T. BEALL.

Subscribed and sworn to before me, this 5th day of March, A. D. 1870.
[SEAL.] W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:
The Territory of New Mexico for the use, &c., vs. George T. Beall et als. Affidavit for continuance. Filed in open court this 5th day of March, 1870. W'm Breeden, clerk.

And be it further remembered that on Saturday, the 5th day of March, A. D. 1870, being the twelfth day of the February A. D. 1870
73 term of the said district court for the said Territory of New Mexico, the following proceedings were had, to wit:

It is ordered by the court that all causes, motions, and proceedings, not otherwise disposed of, be continued until the next term of this court, to which time this court stands adjourned.

And be it further remembered that afterwards, to wit, on the 9th day of March, 1870, in the foregoing cause, the following copy of account was filed, which is in the words and figures following, to wit:

*C. S. Hinckley in ac. with Hinckley, Blake and Wardwell.*

| | | | Dr. | Cr. |
|---|---|---|---|---|
| 1865. | | | | |
| Oct. | 3. | To cash | 833 54 | |
| " | 13. | " mdse | 7 00 | |
| Dec. | 20. | " cash | 5,246 78 | |
| " | " | " " | 660 09 | |
| 1866. | | | | |
| Jany. | 12. | " mdse | 102 75 | |
| Feb. | 26. | " cash | 420 00 | |
| Mar. | 26. | " " | 3,392 16 | |
| | April | 24. To mdse | 63 50 | |
| 74 | April | 25. To sundries | 1,020 28 | |
| | May | 14. " Shedd, Blake & Co | 2,000 00 | |
| | " | " " cash | 1,548 83 | |
| June | 5. | " | 349 56 | |
| " | 16. | " | 500 00 | |
| " | " | " | 500 00 | |
| " | 29. | Mdse | 109 32 | |
| " | 30. | " | 101 65 | |
| July | 2. | " | 3 00 | |
| " | 4. | " | 817 88 | |
| " | 11. | Shedd, Blake & Co | 716 33 | |
| " | " | Cash | 5,000 00 | |
| " | 18. | " | 4 00 | |
| " | 31. | Sundries | 138 80 | |
| Aug. | 8. | Cash | 130 50 | |
| " | 15. | " | 2,299 20 | |
| " | " | Sundries | 39 65 | |
| " | 22. | Cash | 1,096 49 | |
| Oct. | 1. | Sundries | 6,067 94 | |
| " | 13. | W. V. B. Wardwell | 1,138 91 | |
| " | 15. | Cash | 6,606 05 | |
| " | 18. | Mdse | 51 00 | |
| Nov. | 10. | C. H. Blake | 11,302 98 | |
| | | Am't carried forward | $54,873 59 | |
| Nov. | 10. | Mdse. loss | 692 38 | |
| 1865. | | | | |
| Sept. | 21. | By capital stock | | 50,000 00 |
| | Oct. | 10. By cash | | 9,000 00 |
| 75 | Oct. | 26. By Lieu't Co'l Rigg | | 30 00 |
| 1866. | | | | |
| Sept. | 25. | By sundries | | 10,045 00 |
| " | 26. | " J. R. Hunt | | 140 00 |
| May | 4. | Cash | | 50 00 |
| " | 8. | " | | 100 00 |
| " | 24. | Mdse | | 22 92 |
| June | 14. | C. H. Blake | | 3,392 16 |
| July | 11. | Mdse | | 50 00 |
| " | 18. | Sundries | | 5,000 00 |
| Aug. | 8. | Personal property | | 1,000 00 |
| " | 18. | E. W. Bates | | 8 25 |
| Sept. | 3. | G. E. Blake | | 22 25 |
| Sept. | 6. | Sundries | | 540 00 |

| | | | | |
|---|---|---|---|---|
| Oct. | 13. | Personal property | | 609 81 |
| " | 31. | Sundries | | 10,512 92 |
| Nov. | 8. | W. H. Ayers | | 100 00 |
| " | 10. | Hinckley & Blake | | 4,500 00 |
| " | 10. | Mdse | | 51 00 |
| " | " | C. H. Blake | | 3,084 16 |
| " | " | Sundries, (profits) | | 3,772 12 |
| | | | 55,565 97 | 102,104 59 |
| | | Am't to bal. car'd down | 46,538 62 | |
| | | | $102,104 59 | $102,104 59 |

Nov. 10. By balance on books Wardwell & Blake..... $46,538 62

TERRITORY OF NEW MEXICO,
*County of Socorro, ss:*

76 Personally appeared before me, John R. Hunt, a notary public for the county of Socorro, Territory of New Mexico, at Fort Craig, in the Territory and county aforesaid, William V. B. Wardwell, of the late firm of Hinckley, Blake and Wardwell, who, being duly sworn according to law, deposes and says that the annexed statement of the account of Charles S. Hinckley, (deceased,) in account with the late firm of Hinckley, Blake and Wardwell, is just and true, to the best of his knowledge and belief, and that it shows correctly the indebtedness of said firm to the estate of the late Charles S. Hinckley.

(Signed) W. V. B. WARDWELL.

Sworn and subscribed before me this 7th day of December, A. D. 1866.

(Signed) J. R. HUNT,
[SEAL.] *Notary Public.*

On which said account is the following endorsement, to wit:
The Territory of New Mexico for use, &c., vs. George T. Beall et als. Copy ac. Filed in my office this 9th day of March, 1870. W'm Breeden, clerk.

77 And afterwards, to wit, on the 5th day of May, A. D. 1870, the following affidavit was filed; which said affidavit is in the words and figures following, to wit:

First judicial district court, Territory of New Mexico.

THE TERRITORY OF NEW MEXICO, FOR THE use of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ Manuel Gallegos, Sigmund Seligman, and Emanuel Spiegelberg. } Debt.

William W. Griffin, plaintiff in the above-entitled cause, being duly sworn, upon his oath states that the said defendant, Emanuel Spiegelberg, is not a resident of the Territory of New Mexico, but that he, the

said Emanuel Spiegelberg, is a resident of and resides in the city and State of New York, as this affiant is informed and believes.

WILLIAM W. GRIFFIN.

78 Subscribed and sworn to before me this 5th day of May, A. D. 1870, at Santa Fé, New Mexico.

[SEAL.] W'M BREEDEN,
*Clerk of said Court.*

On which said affidavit is the following endorsement, to wit:
The Territory, for the use, &c., vs. George T. Beall et als. Debt. Affidavit of non-residence of Emanuel Spiegelberg. Filed in my office this 5th day of May, 1870. W'm Breeden, clerk.

And afterwards, to wit, on the 17th day of May, 1870, the following affidavit was filed; which said affidavit is in the words and figures following, to wit:

First judicial district court, Territory of New Mexico, county of Santa Fé.

THE TERRITORY OF NEW MEXICO, FOR THE use of William W. Griffin, administrator de bonis non of Charles S. Hinckley, deceased,
79 *vs.*
GEORGE T. BEALL, ABRAHAM STAAB, José Manuel Gallegos, Sigmund Seligman, and Emanuel Spiegelberg. } Debt.

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

William W. Griffin, plaintiff in the above-entitled cause, being first duly sworn, upon his oath states that on the eleventh day of May, A. D. 1870, he mailed, in a sealed envelope, stamped with the amount of postage stamps required for full letter postage, a copy of the weekly New Mexican newspaper, containing a notice to the above-named defendant, Emanuel Spiegelberg, of the pending of said suit, a copy of which notice is attached to this affidavit, to Emanuel Spiegelberg, care of Levi Spiegelberg, No. 132 Church street, New York City, that being the present address of the said defendant, Emanuel Spiegelberg, as this affiant is reliably informed.

W. W. GRIFFIN.

Subscribed and sworn to before me this 17th day of May, A. D. 1870.

80 [SEAL.] W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:
The Territory for the use, &c., vs. Geo. T. Beall et als. Affidavit of mailing notice to defendant, Spiegelberg. Filed in my office this 17th day of May, 1870. W'm Breeden, clerk.

And afterwards, to wit, on the 22nd day of June, A. D. 1870, was filed the following affidavit; which said affidavit is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé, ss:*

Personally appeared before me, clerk of the first judicial district court, Territory of New Mexico, W'm H. Manderfield, who, being sworn according to law, says that he is one of the proprietors of the New Mexican, a weekly paper published in the city of Santa Fé,
81 county and Territory aforesaid; and that the annexed advertisement was published in the said paper for six consecutive weeks, as follows, to wit: May 10th, May 17th, May 24th, May 31st, June 7th, and June 14th, 1870.

W'M H. MANDERFIELD.

Subscribed and sworn to before me this 22d day of June, A. D. 1870.
[SEAL.] W'M BREEDEN, *Clerk.*

[Advertisement.]

*Summons to non-resident defendant.*

Territory of New Mexico, first judicial district court, county of Santa Fé.

THE TERRITORY OF NEW MEXICO, FOR THE use of William W. Griffin, administrator de bonis non of the estate of Charles S Hinckley, deceased,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ Manuel Gallegos, Sigmund Seligman, and Emanuel Spiegelberg. } Debt on bond.

Emanuel Spiegelberg:

You are hereby notified and summoned to be and appear before
82 the district court for the first judicial district of the Territory of New Mexico, on the first day of the next term thereof, to be begun and held within and for the county of Santa Fé, at the court-house of said county, in the city of Santa Fé, on the third Monday of July, A. D. 1870, then and there to answer unto the Territory of New Mexico for the use of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased, in an action of debt, to the damage of the said plaintiff, for the use as aforesaid, sixty thousand dollars, together with interest and cost of suit; and in default of your appearance in said suit, as herein required, judgment will be rendered against you according to law.

W'M BREEDEN,
*Clerk of said Court.*

S. B. ELKINS,
*Plaintiff's Attorney.*
SANTA FÉ, N. M., *May 5th*, 1870.

On which said notice is the following endorsement, to wit:
83 The Territory, for the use, &c., vs. Geo. T. Beall et als. Printers' fees, $37 50. Filed in my office this 22d day of June, 1870. W'm Breeden, clerk.

And be it further remembered that on Tuesday, the 19th day of July, A. D. 1870, being the second day of the July, A. D. 1870, term of the

United States district court for the 1st judicial district of the Territory of New Mexico, sitting in and for the county of Santa Fé, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

THE TERRITORY, FOR THE USE OF W. W GRIFFIN, administrator, &c.,
*vs.*
GEORGE T. BEALL ET ALS. } Debt.

On motion of the said plaintiff, by his attorney, the defendant, Emanuel Spiegelberg, is ruled to plead herein to-morrow morning; and this cause is set down for trial on Thursday morning next, at the opening of court.

84 And be it further remembered, that on Wednesday, the 20th day of July, A. D. 1870, being the third day of the July, A. D. 1870, term of the said district court for the said county of Santa Fé, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

THE TERRITORY, FOR THE USE OF W.W. GRIFFIN, administrator, &c.,
*vs.*
GEORGE T. BEALL, EMANUEL SPIEGELBERG, et als. } Debt.

Now come on to be heard the demurrer of the defendant, Emanuel Spiegelberg, by his attorney, to the amended petition of the said plaintiff herein; which said demurrer is in words and figures following, to wit:

Santa Fé district court, February term, 1870.

THE TERRITORY OF NEW MEXICO, FOR THE use and benefit of W. W. Griffin, adm'r, &c.,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, EMANuel Spiegelberg, Sigmund Seligman, and
85 José M. Gallegos.

And the said defendant, Emanuel Spiegelberg, by Benedict and Clever, his attorneys, comes and defends the wrong and injury when, &c., and says that the said petition, as amended, and the matters therein contained, in manner and form as the same are therein set forth, are not sufficient in law for the said plaintiff to have or maintain the aforesaid action thereof against the said defendant, and he, the said defendant, is not bound by law to answer the same; and this he is ready to verify, wherefore he prays judgment, &c.

Said defendant shows to the court the following special causes of demurrer, to wit:

Said petition shows no ground upon which the said Griffin, as adm'r de bonis non, is entitled to prosecute this suit.

And for that the said petition is indefinite, vague, and uncertain in its allegations and charges of negligence, &c., against said George T.

Beall, as executor, &c.; and said petition is in other respects in-
86 formal, uncertain, and insufficient.

K. BENEDICT & C. P. CLEVER,
*Att'ys for Def't Spiegelberg.*

On which said demurrer is the following endorsement, to wit:
W. W. Griffin, ad'r, &c., vs. George T. Beall and others. Demurrer of Emanuel Spiegelberg to amended petition. Filed in open court this 20th day of July, 1870. Wm. Breeden, clerk.
Which demurrer is overruled by the court.

And afterwards, to wit, on the 21st day of July, 1870, the following copies of accounts and proceedings of the probate court of the county of Santa Fé, in the matter of the estate of Charles S. Hinckley, deceased, were filed, and are in the words and figures following, to wit:

*George T. Beall in account with the estate of the late Charles S. Hinckley.*

DR.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1867. | | | | | | |
| March | 1. | To amount received from | Wardwell & Blake | | 904 | 75 |
| 87 | | " " " " | " " | | 906 | 34 |
| | | " " " " | Col. N. H. Davis . | | 20 | 00 |
| | | " " " " | Wardwell & Blake | | 1,169 | 80 |
| | | " " " | Wardwell & Watts | | 300 | 00 |
| | | " " " | Wardwell & Blake | | 879 | 57 |
| | | " " " | " " | | 1,121 | 91 |
| | | " " " | Wardwell & Watts | | 250 | 00 |
| | | | | | $5,552 | 37 |

CR.

| | | | | | |
|---|---|---|---|---|---|
| March | 4. | By am't paid | Dr. J. C. McKee | 500 | 00 |
| | 4. | " " " | " L. W. Kennon | 130 | 00 |
| | 4. | " " " | M. Coffman | 84 | 70 |
| | 4. | " " " | funeral expenses | 225 | 50 |
| | 8. | " " " | Staab & Bros | 216 | 89 |
| | " | " " " | Seligman & Bro | 23 | 85 |
| | 9. | " " " | R. H. Tompkins | 100 | 00 |
| | 12. | " " " | Elsberg & Amberg | 154 | 00 |
| April | 27. | " " " | U. S. dep'ty collector for income tax. | 1,169 | 80 |
| May | 20. | " " " | J. Serafin Ramirez | 1,000 | 00 |
| " | 18. | " " " | N. Hughes on note given in his favor by Hinckley & Blake for $2,000 00. | 1,000 | 00 |
| " | 18. | " " | of interest paid on the above note | 171 | 91 |
| Oct. | 17. | " " | paid Arthur Latham | 150 | 00 |
| Dec. | 4. | " " " | " " | 354 | 25 |
| | | " " | George T. Beall, as administrator, on receiving the sum of $5,552 $\frac{37}{100}$, at $2\frac{1}{2}$ pr. ct | 138 | 80 |
| 88 | | To am't paid | George T. Beall, adm'r, for disbursing the sum of $5,280 90, at $2\frac{1}{2}$ per cent. | 132 | 02 |

| | | | | |
|---|---|---|---|---|
| 1868. | | | | |
| May | 2. | " | " approved by the probate court for special services | 110 00 |
| | | | | $5,661 72 |

| | | | | |
|---|---|---|---|---|
| 1868. | | | | |
| April | 30. | To am't due from | Wardwell & Blake | 41,556 25 |
| | | " " " " | Wardwell & Watts | 2,414 82 |
| | | " " " " | Asa B. Carey | 1,969 34 |
| | | " 917 shares Bay State Pinos Altos Mining Company, present value not known, as there is no market for the same. | | |
| | | | | $45,940 41 |

RECAPITULATION.

| | | |
|---|---|---|
| By amount received | | 5,552 37 |
| To " disbursed | | 5,661 72 |
| To am't due George T. Beall | | $109 35 |

I have the honor to state, for the information of the hon. probate court, that the household furniture mentioned in the inventory furnished January 10, 1867, were disposed of according to the last will and testament of the late Charles S. Hinckley, and that no disposition has been made of the interest in the Cañon del Agua and San Pedro grants,
89 also mentioned in the inventory. I should also state that the amount due the estate of the late Charles S. Hinckley by W. V. B. Wardwell and Charles H. Blake, that they have promised to settle their indebtedness as soon as the old debts of the concern are paid, said debts having been contracted while the late Charles S. Hinckley was a partner of the concern. All of which is respectfully submitted.

GEORGE T. BEALL,
*Administrator.*

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Yo, el infrascrito, administrador y ejecutor de la ultima disposicion testamentaria del finado Charles S. Hinckley, juro solemnamente que el antecedente informe, manibiesta la practica de mi administracion del estado de dicho finado hasta esta fecha, lo cual ha sido hecho por mi y manifestado, segun mi mejor conocimiento.

GEORGE T. BEALL,
*Administrator.*

Juramentado y suscrito ante mi hoy 4 de Mayo de 1868.

TRINIDAD ALARID,
*Esc'bo de la Corte de Pruebas.*

90 *Sesion regular de la corte de pruebas del condado de Sante Fé en el Territorio de Nuevo Mejico, en su termino regular de Mayo, A. D.* 1868.

LUNES, *Mayo* 4, A. D. 1868.

La corte, presentes los oficiales de la misma, se reunio en este dia de conformidad con la ley y fue proclamada abierta.

Ahora se presento George T. Beall, y presento un informe anual como ejecutor de la ultima disposicion testamentaria del finado Charles S. Hinckley, y administrador de dichos bienes, el cual derpues de haber sido bien examinado, por la corte, fue aprobado por la misma, y el escribano fue instruido de enregistrar dicho informe y sus comprobantes en el libro respectivo tenido con tal fin, y derpues enregistrado, devolver el original al administrador.

(Firmado) ANTONIO ORTIZ Y SALAZAR,
*Juez de Pruebas.*

(Firmado) TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Yo, el infrascrito escribano, diputado escribano de la corte de
91 pruebas en y por el condado de Santa Fé en dicho Territorio, certifico, que el antecedente informe y procedimientos de dicha corte sobre el mismo es una copia verdadera, y correcta, sacada de los registros tenidos en la oficina de dicha corte.

En testimonio de lo cual pongo mi nombre y el sello de la corte de pruebas de dicho condado en Santa Fé, N. M., erte dia 12 de Julio, A. D. 1870.

[SEAL.] TRINIDAD ALARID,
Por LUIS TAFOYA,
*Diputado Escribano.*

Of which affidavit, proceedings, and certificate, the following is a correct translation, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I, the undersigned, administrator and executor of the last will of the deceased Charles S. Hinckley, solemnly swear that the foregoing report exhibits the results of my administration of the estate of said
92 deceased to this date, which has been made by me and set forth according to the best of my knowledge.

GEORGE T. BEALL,
*Administrator.*

Sworn and subscribed before me this 4th day of May, 1868.

TRINIDAD ALARID,
*Clk of the Probate Court.*

*Regular session of the probate court of the county of Santa Fé, in the Territory of New Mexico, at the regular term of May, A. D.* 1868.

MONDAY, *May* 4, A. D. 1868.

The court, the officers of the same being present, convened this day in conformity to law, and was announced open.

Now appeared George T. Beall, and presented an annual report, as

executor of the last will of the deceased, Charles S. Hinckley, and administrator of the said property, which, after having been well examined by the court, was approved by the same, and the clerk was instructed to record said report and its vouchers in the respective book kept for that purpose, and after recording it, to return the original to the administrator.

93 (Signed) ANTONIO ORTIZ Y SALAZAR,
*Probate Judge.*

(Signed) TRINIDAD ALARID,
*Clerk of the Probate Court.*

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I, the undersigned, deputy clerk of the probate court in and for the county of Santa Fé, in said Territory, certify that the foregoing report, and proceedings of said court upon the same, is a true and correct copy taken from the records kept in the office of said court.

In testimony whereof I place my name and the seal of the probate court of said county, at Santa Fé, N. M., this 12th day of July, A. D. 1870.

[SEAL.] TRINIDAD ALARID,
By LUIS TAFOYA,
*Deputy Clerk.*

On which said paper is the following endorsement, to wit:

W. W. Griffin *vs.* George T. Beall et als. Filed in open court this 21st day of July, 1870. W'm Breeden, clerk.

*George T. Beall in account with the estate of the late Charles S. Hinckley.*

DR.

| | | | |
|---|---|---|---|
| 94 | 1868. | To amount bro't forward from last statement rendered May 4, 1868, and approved by the probate court | $5,552 37 |
| May | 20. | To am't rec'd from Wardwell & Blake | 135 60 |
| " | " | " " Asa B. Carey | 469 34 |
| " | " | " " Wardwell & Watts | 332 40 |
| " | " | " " W. H. Bell; this am't was not mentioned in the inventory rendered to the probate court, January 10, 1867 | 200 00 |
| | | | $6,689 71 |

CR.

| | | | |
|---|---|---|---|
| | 1868. | By am't bro't forward from last statement rendered May 4, 1868, and approved by the probate court | 5,661 72 |
| May | 20. | " am't paid George T. Beall, due from last statement rendered May 4, 1868. | 109 35 |
| " | 20. | " amount paid clerk probate court | 15 00 |
| " | " | " " " " " | 10 00 |
| Aug. | 6. | " " " Arthur Latham on note | 445 88 |
| " | 24. | " " " " " " " | 315 00 |
| | | | $6,557 75 |

| | | |
|---|---|---|
| | To am't due from Wardwell & Blake..... | 41,420 65 |
| | " " " " Wardwell & Watts..... | 2,227 40 |
| | " " " " Asa B. Carey..... | 1,500 00 |
| 95 | " 917 shares Bay State Pinos Altos Mining Company, present value not known, as there is no market for the same..... | |
| | | $45,148 05 |

RECAPITULATION.

| | | |
|---|---|---|
| | To amount received..... | 6,689 71 |
| | " " disbursed..... | 6,557 75 |
| | To am't due from Geo. T. Beall..... | $131 96 |

I certify that the foregoing is a true and accurate statement of all moneys received and disbursed by me, as administrator to the estate of the late Charles S. Hinckley, deceased, from May 4th, 1868, to January 26th, 1869.

Respectfully submitted.

GEORGE T. BEALL,
*Administrator.*

SANTA FÉ, NEW MEXICO, *January* 26, 1869.

Sworn to and subscribed before me this 26th day of January, A. D. 1869.

TRINIDAD ALARID,
*Probate Clerk.*

Certifico, que el antecedente informe ha sido enregistrado por mi hoy el dia 1° de Noviembre, A. D. 1869.

96 TRINIDAD ALARID,
*Escribano.*

On which said paper is the following endorsement, to wit:

The Territory for the use of W. W. Griffin vs. Geo. T. Beall et als. Filed in open court this 21st day of July, 1870. W'm Breeden, clerk.

*Sesion especial de la corte de pruebas en y por el condado de Santa Fé en el Territorio de Nuevo Mejico.*

MIERCOLES, *Enero* 27, A. D. 1869.

La corte se reunio en este dia, presentes los oficiales de la misma, y fue proclamada abierta.

Habiendose el dia veinte del que cursa prorogado todos los asuntos sobre testamentarias hasta el proximo termino regular de esta corte, el juez en sesion especial tomó accion sobre la resignacion hecha y presentada por George T. Beall, como ejecutor y administrador del estado del finado Charles S. Hinckley, quien al mismo tiempo presento un
97 informe de la practica por el desde su anterior informe como administrador de dicho estado, el cual fue examinado y aprobado por la corte.

La corte en vista de las razones expuertas en dicho resignacion, que

el dicho Beall siendo un oficial del ejercito de los E. U. y siendo llamado para Washington, y expresto a ser cambiado a otio lugar, lo cual le impide ejercer la administracion, acepta tal resignacion, quedando George T. Beall responsable en todas las restriccions de la ley, por lo que existe y tiene el como administrador del estado del finado C. S. Hinckley, perteneciente a la dicha administracion, hasta entregarle a su sucesor; y en seguida al señor cum testamento annexo del estado del finado Charles S. Hinckley de todo lo que no esta administrado, teniendo antes el dicho administrador que performar todo lo requerido por la ley en el asunto. Entonces la corte se prorogo sine die.

(Firmado) ANTONIO ORTIZ Y SALAZAR,
*Juez de Pruebas.*

(Firmado) TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

98 Certifico yo el infrascrito diputado escribano de la corte de pruebas del condado de Santa Fé, en el Territorio arriba dicho, que el antecedente escrito es una verdadera copia sacada del registro del libro de procedimientos de dicha corte, tenido en la oficina de mi cargo.

En testimonio de lo cual pongo mi nombre y el sello de la corte de pruebas de dicho condado en Santa Fé de Nuevo Mejico, este dia 21 de Julio, A. D. 1870.

[SEAL.]

TRINIDAD ALARID,
*Escribano de la Corte de P'bas,*
Por LUIS TAFOYA, *Diputado.*

On which said paper is the following endorsement, to wit:

The Territory, for the use of W. W. Griffin, vs. Geo. T. Beall et als. Filed in open court this 21st day of July, 1870. W'm Breeden, clerk.

99 Of which said proceedings the following is a correct translation, to wit:

*Special session of the probate court of the county of Santa Fé, Territory of New Mexico.*

WEDNESDAY, *January* 27, A. D. 1869.

The court convened this day, the officers of the same being present, and was declared open.

Having on the twentieth instant adjourned all business upon wills to the next regular term of this court, the judge, at a special session, took action upon the resignation made and presented by George T. Beall, as executor and administrator of the estate of the deceased Charles S. Hinckley, who at the time presented a report of his action since his former report as administrator of said estate, which was examined and approved by the court.

The court, in view of the reasons expressed in said resignation, that the said Beall, being an officer of the Army of the U. S., and being ordered to Washington, and expecting to be transferred to another place, which would prevent his exercising the administration, accepts such resignation, holding the said George T. Beall responsible under all the requirements of the law for that which he has done as adminis-

100 trator of the estate of the deceased C. S. Hinckley pertaining to said administration, until he has turned over to his successor and instructed that gentleman, cum testamento annexo of the estate of the deceased Charles S. Hinckley, of all that has not been administered upon, requiring the said administrator to perform everything required by the law in the premises.

The court then adjourned sine die.

(Signed) ANTONIO ORTIZ Y SALAZAR,
*Probate Judge.*

(Signed) TRINIDAD ALARID,
*Clerk of the Probate Court.*

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I, the undersigned, deputy clerk of the probate court of the county of Santa Fé, in the Territory aforesaid, certify that the foregoing writing is a true copy, taken from the book of the proceedings of said court, kept in the office in my charge.

In witness whereof I place my name and the seal of the probate court of said county, at Santa Fé, New Mexico, this 21st day of July, A. D. 1870.

[SEAL.] TRINIDAD ALARID,
*Clerk of the Probate Court.*
By LUIS TAFOYA, *Deputy.*

101 And be it further remembered, that afterwards, to wit, on Wednesday, the 20th day of July, A. D. 1870, being the third day of the July, A. D. 1870, term of the United States district court for the first judicial district of the Territory of New Mexico, sitting in and for the county of Santa Fé, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

THE TERRITORY OF NEW MEXICO, FOR THE use of W. W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL ET ALS. } Debt.

And now come the said defendants, by their attorneys, and move the court for a continuance of this cause until the next term of this court, for reasons stated in affidavits filed, which said motion and affidavits are in the words and figures following, to wit:

District court, July term, 1870.

TERRITORY, USE OF WILLIAM W. GRIFFIN, ad'r, &c.,
*vs.*
102 GEORGE T. BEALL AND OTHERS.

The defendants, by their attorneys, move the court for a continuance of this cause, and in support of this motion.

BENEDICT, CLEVER and TOMPKINS,
*Atty's for Def'ts.*

On which said motion is the following endorsement, to wit:
W. W. Griffin vs. George T. Beall. Filed in open court this 21st day of July, 1870. W'm Breeden, clerk.

THE TERRITORY OF NEW MEXICO, FOR THE use of W. W. Griffin, ad'r, &c.,
*vs.*
GEORGE T. BEALL ET ALS.

Lehman Spiegelberg, agent of Emanuel Spiegelberg, one of the defendants in this cause, being duly sworn upon his oath, states that the defendants in this cause cannot safely go to trial in the above entitled cause at the present term of this court, on account of the absence of material
103 witnesses and their testimony, on behalf of the said defendants at this term. He saith that they expect to prove by one J. R. Hunt, that for some time before and after the death of Charles S. Hinckley, he, the said Hunt, was the book-keeper for the firm of Hinckley, Blake and Wardwell, at Fort Craig, New Mexico. That about that time, or a short time after the death of the said Hinckley, the said George T. Beall came to Fort Craig aforesaid, at the place of business of the said firm, to ascertain what interest and the amount which the said Hinckley had in the said firm; that the said Hunt as such book-keeper, had a more thorough, accurate, and full knowledge of all the property, credits, debts, liabilities, and circumstances of said firm than any other person in the employ of the firm of Hinckley, Blake & Co., before and at the time of the death of the said Hinckley. That at the request of the said surviving partners, and of said Beall, said Hunt made a full, thorough, and correct examination and statement of the entire condition of the said firm, with all the interest that said Hinckley had in the same, and informed the said Beall of the said statement, and
104 that the said Hunt omitted in no way in furnishing a true and correct statement of the condition of said firm, and the interest in the same, at the time of the decease of the said Hinckley.

This affiant further states that the said defendants further expect to prove by the said J. R. Hunt, that at the time said Beall so visited Fort Craig, for the purposes aforesaid, the said J. R. Hunt was the person who represented the surviving partners of the said Hinckley, deceased, in the examination of the papers, stocks, books, property, and all other assets, and other matters belonging to the said firm; and that the said George T. Beall made no sale or transfer of the interest of said estate to the said surviving partners, and that the said George T. Beall, executor, as aforesaid, in no manner whatever converted to his or the said surviving partners' use the interest of the said estate of the said Hinckley, deceased.

This affiant further states that the said defendant, Emanuel Spiegelberg, who is a resident of the State of New York, was not apprised, and did not know of the pendency of this suit until the twenty-sixth day of May, one thousand eight hundred and seventy, and that immediately upon his being so advised he made prepara-
105 tions, and communicated by letter to this affiant as his agent the fact that he had received information that notice citing him had been published in this suit, and instructed affiant to employ counsel in his, the said Emanuel Speigelberg's, defence. That the counsel instructed by him to be employed were then in the southern part of this Territory, professionally engaged attending the courts there being holden, and did not return to Santa Fé until about the first day of the present

month; that since such return there has been no sufficient time to take the deposition of the said J. R. Hunt, who, as this affiant has been lately informed, for the first time, is a resident of the city of New Orleans, in the State of Louisiana.

This affiant further saith that he knows of no witness by whom he can be surely able to prove fully the material and essential facts above mentioned as by said Hunt. Affiant says the said defendants may be able to prove some of said facts by William V. B. Wardwell, and one Bates, residents of Fort Craig, in the county of Socorro, in this Territory, and that the said Bates was a clerk in the business of the said firm of Hinckley, Blake and Wardwell, at or about the time of the death
106 of the said Hinckley, and that he succeeded the said Hunt as bookkeeper of the surviving parties, and has continued in the employ of the said surviving parties, and that during the present month he has gone on business of the said Wardwell to the State of Texas, where he now is, as this affiant is informed and believes.

Affiant saith that he is informed and believes that all of the defendants present, except the said Emanuel Spiegelberg, by their counsel, took a subpœna from the clerk of this court, in the fore part of the last week, for the said Wardwell and Bates, and enclosed the same in a letter duly stamped, and deposited the same in the post office at Santa Fé, directed to be forwarded to the sheriff of the county of Socorro, with special request that the sheriff, or his deputies, serve the same as soon as possible upon the arrival of the subpœna in the hands of the said sheriff or his deputies to be served. Furthermore that the said counsel, at the time when said subpœna was sent as aforesaid, wrote to James Logan, esq., the postmaster at the county seat of the said county of Socorro, specially requesting him to see that the said letter be im-
107 mediately imparted to the said sheriff or deputies, and that he request the said sheriff or deputies to lose no time in serving the said subpœna, or words to that effect, as this affiant is informed and verily believes.

Affiant further saith that he has been informed from private sources, and verily believes, that the said subpœna has been served upon the said Wardwell, if not upon the said Bates; and as to the latter, affiant has not sufficient information to enable him to state. He saith that from information, and as he verily believes, he has learned that the said Wardwell will arrive at this place before or early next week.

Affiant further saith that it appears upon the record of this cause, that all of the defendants except the said Beall are sued jointly as securities of said Beall as executor as aforesaid. Furthermore affiant saith that he with those who are sureties, together with the said Emanuel Spiegelberg, have confidently excepted that the said Beall would certainly be present at this term of the court to specially defend himself and all of the securities in this suit, but that he is not present, nor has he informed any of the said securities of the cause of his absence.
108 Affiant supposes the cause to be that he is an officer in the United States Army, and is stationed in St. Louis, Missouri, and may have failed to obtain from superior authority leave of absence, so that he could be present at this term, and affiant cannot state whether the said Beall will be present or not at any future day during the present term of this court. Affiant saith that said Emanuel Spiegelberg, and his co-securities in this case now present, expect to be able to procure the presence of the aforementioned witnesses, or their depositions to be used on the trial in this cause, at the next term of this court, and that this application is not made for vexation or delay, but that justice may

be done in the premises, and that the failure of the presence of the said witnesses, or the deposition of either, has not resulted from the connivance or consent of the said defendants.

LEHMAN SPIEGELBERG.

Subscribed and sworn to before me this 21st day of July, A. D. 1870.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

109 The Territory, for the use of W. W. Griffin, administrator, &c., vs. George T. Beall et als. Filed in open court this 21st day of July, 1870. W'm Breeden, clerk.

Sante Fé district court, July term, A. D. 1870.

THE TERRITORY OF NEW MEXICO, USE OF W. W. Griffin, adm'r, &c.,
*vs.*
GEORGE T. BEALL & OTHERS.

Abraham Staab, one of the defendants in the above-entitled cause, being duly sworn, states that he is only security upon the bond upon which said suit is founded, and that at the last February term of said court, when said suit was instituted, this affiant was informed by said George T. Beall, the principal in said cause, that he, this affiant, need not employ counsel, nor put himself to any expense or trouble about the defense of said suit; that he, Beall, would provide counsel and all the necessary means for the proper defense of the same, and relying upon said

110 statement of said Beall, he did not employ counsel nor do anything else toward preparing for his defense in said cause until the second day of the present term of this court, when he was advised that said Beall had failed to provide the necessary means for the proper defense of said cause, whereupon he immediately employed counsel for his defense; that he has been advised by his counsel that the said defendants have a good and meritorious defense to said cause; that he has been advised, and believes, that the said defendants can prove by one J. R. Hunt, who is now, as this affiant has been informed, a resident of the city of New Orleans, State of Louisiana, that at the time of the death of Charles S. Hinckley, and for some time afterwards, the said Hunt was the bookkeeper of the firm of Hinckley, Blake and Wardwell, and was more thoroughly acquainted with the condition and circumstances of the interest of the said Charles S. Hinckley in said firm than any other person; and that said Hunt assisted the said George T. Beall in ascertaining the amount of interest that the said Charles S.

111 Hinckley had in said firm or business at the time of his death, and that the investigation of said interest of said Hinckley was a true and correct one; that said Beall made no sale of said interest to said Blake and Wardwell, either verbally or otherwise, but the goods only remained in their possession as the surviving partners of the said Hinckley, to be by them settled and closed up, as this affiant is advised they were entitled to.

He also expects to be able to prove by said Hunt that said Blake and Wardwell are abundantly able to pay their indebtedness to the estate of the said Hinckley. He expects also to be able to prove by said Wardwell, and one Bates, the present bookkeeper of the said Blake and Wardwell, some of the facts above stated, but not so fully as by the

said Hunt; that he has been advised and believes that a subpœna has been taken out for said Wardwell and Bates, but has not been returned, and that said witnesses are not in attendance; that this affiant expects to be able to have the benefit of the evidence of all said witnesses at the next term of this court. That this application is not made for vexation or delay, but that justice may be done in the premises.

ABRAHAM STAAB.

112 Subscribed and sworn to before me this 21st day of July, A. D. 1870.

[SEAL.] W'M BREEDEN,
*Clerk.*

On which said affidavit is the following endorsement, to wit:

The Territory, use, &c., vs. George T. Beall and others. Affidavit. Filed in open court this 21st day of July, 1870. W'm Breeden, clerk.

Which motion being argued by counsel, and the court being sufficiently advised in the premises, overrules said motion, to which decision of the court defendants, by their attorneys, except.

And afterwards, to wit, on the 21st day of July, A. D. 1870, the following plea of Emanuel Spiegelberg and replication thereto were filed; which said plea and replication are in the words and figures following, to wit:

Sante Fé district court, February term, 1870.

113 THE TERRITORY OF NEW MEXICO, FOR the use and benefit of W. W. Griffin, ad'r, &c.,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, Sigmund Seligman, Emanuel Spiegelberg, & José M. Gallegos.

And the said defendant, Emanuel Spiegelberg, by Benedict and Clever, his attorneys, comes and defends the wrong and injury when, &c., and says that he does not owe the said sum of money above demanded, or any part thereof, in manner and form, as the said plaintiff hath above thereof complained against him, and of this the said defendant puts himself upon the country.

BENEDICT & CLEVER,
*Att'ys for def't Spiegelberg.*

And the plaintiff doth likewise.

S. B. ELKINS.

And for a further plea in this behalf the said defendant says actio non, because he says that the said George T. Beall, executor as aforesaid, defendant, did from time to time, and at all times after the
114 making of the said writing obligatory, and the said condition thereof, well and truly observe, perform, fulfil, and keep all and singular the duties, payments, conditions, and agreements in the said condition of the said writing obligatory, specified, comprised, and mentioned in all things therein contained on his part and behalf to be observed, performed, fulfilled, and kept, according to the tenor and effect, true intent, and meaning of the said condition of the said writing obligatory. And this the said defendant is ready to verify, whereupon he prays judgment, &c.

And for a further plea in this behalf said defendant says actio non, because he says the said George T. Beall, executor, as in said petition mentioned, at and in the probate court within and for the county of Santa Fé, on the 26th day of January, 1869, did present himself with his account as such executor for settlement, and which account on the 27th day of January, 1869, was duly approved and confirmed by the said probate court, and that afterwards, to wit, on the —— day of ———, 1869, the said George T. Beall duly resigned the said office
115 and duties of executor, as aforesaid, and the said resignation was by the said probate court in due form accepted, and the said George T. Beall, as executor aforesaid, discharged from further duties and liabilities of, to, and for the estate of the said Charles S. Hinckley, deceased. And this the defendant is ready to verify, wherefore he prays judgment, &c.

BENEDICT & CLEVER,
*For def't Spiegelberg.*

On which said plea is the following endorsement, to wit:
W. W. Griffin, ad'r, &c., vs. George T. Beall & others. Plea of Emanuel Spiegelberg to amended petition. Filed in open court this 21st day of July, 1870. W'm Breeden, clerk.

TERRITORY OF NEW MEXICO, FOR USE, &C., *vs.* GEORGE T. BEALL ET ALS. } Assumpsit.

And the said plaintiff, as to the said defendant, Emanuel Spiegelberg, by him secondly above pleaded, saith precludi non, because said
116 plaintiff says that said George T. Beall, executor, as aforesaid, did not, from time to time, and at all times after the making of the said writing obligatory, and the conditions thereof, well and truly observe, perform, and fulfil and keep all and singular the duties, payments, conditions, and agreements in the said condition of the said writing obligatory, specified, comprised, and mentioned, in all things therein contained, on his part and behalf to be observed, performed, fulfilled, and kept according to the tenor, effect, true intent, and meaning of the said condition of the said writing obligatory, and of this the plaintiff puts itself on the country.

S. B. ELKINS,
*Attorney for Plaintiff.*

And the defendants do the like.

BENEDICT, TOMPKINS & CLEVER,
*For Def'd'ts.*

And the said plaintiff, as to the said plea of the said defendant, Emanuel Spiegelberg, by him thirdly above pleaded, saith precludi non, because said plaintiff saith that the said George T. Beall, executor, as aforesaid, did not present himself, with his accounts, as such
117 executor, to the probate court for settlement, as set forth in said defendant's plea; nor was the said accounts then and there duly approved or confirmed by the probate judge of Santa Fé County, as stated in said plea; nor was said George T. Beall then and there, or at any other time, discharged from further liabilities as to and for said estate of the said Charles S. Hinckley, and of this the plaintiff puts itself upon the country.

S. B. ELKINS,
*Att'y for Pl'ff.*

And the def'd'ts do the like.

BENEDICT, TOMPKINS & CLEVER,
*For Def'd'ts.*

On which said replication is the following endorsement, to wit: Territory of N. M., for use, &c., vs. George T. Bealls et als. Replication to plea of Spiegelberg. Filed in open court this 21st day of July, 1870. W'm Breeden, clerk.

118 And be it further remembered that afterwards, to wit, on the same day, being the 21st day of July, A. D. 1870, and the fourth day of the July, A. D. 1870, term of the said district court for said county of Santa Fé, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

THE TERRITORY OF NEW MEXICO, FOR THE use of W. W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL ET ALS.
} Debt.

This day comes the said parties by their attorneys, and issue being joined in this cause between the parties, thereupon came a jury, to wit, Pedro Delgado, Juan José Silva, Tomas Antonio Romero, Polinario Casados, Pedro Montoya, José Manuel Quintana, Jesus Arias, Trinidad Brito, Jesus Garduño, Candelario Garduño, German Pino, and Mariano Sena, twelve good and lawful men, duly elected, tried, and sworn the truth to speak upon the issue joined between the parties, having heard the evidence of the witnesses and a part of the arguments of
119 counsel, and there not being time to conclude the trial of this cause on this day, the further hearing of the same is adjourned until to-morrow, and the jury is left in charge of officers specially sworn and charged by the court.

And be it further remembered that afterwards, to wit, on Friday, the 22d day of July, A. D. 1870, being the fifth day of the July, A. D. 1870, term of the said court for the said county of Santa Fé, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

THE TERRITORY OF NEW MEXICO, FOR THE use of William W. Griffiin, administrator de bonis non of the estate of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ Manuel Gallegos, Sigmund Seligman, and Emanuel Spiegelberg.
} Debt.

This day again came the said parties by their attorneys, and the same jury as of yesterday, and the arguments of counsel being concluded, and the jury having heard the instructions of the court, upon their
120 oaths do say: We, the jury, find that the said defendants do owe to the said plaintiffs the sum of one hundred and twenty thousand dollars, in manner and form as the said plaintiff hath complained against

him, and they assess the damages of the said plaintiff, by reason of the detaining the said debt, to forty-eight thousand dollars; that the said defendant, George T. Beall, did not well and truly observe, perform, fulfil, and keep all and singular the requirements of the conditions of the bond upon which this action is founded, according to the tenor and effect thereof, and that the said defendant, George T. Beall, was not discharged from further liabilities of, to, and for the estate of Charles S. Hinckley, deceased, by the probate court. It is therefore considered by the court that the said plaintiff, the Territory of New Mexico, for the use of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased, recover of the said defendants, George T. Beall, Abraham Staab, José Manuel Gallegos, Sigmund Seligman, and Emanuel Spiegelberg, the said sum of one hundred and twenty
121 thousand dollars, the debt aforesaid, and the said sum of forty-eight thousand dollars, the damages of the said plaintiff, as aforesaid, and also the costs in this behalf expended to be taxed, and that execution issue therefor against the said defendants.

And be it remembered that afterwards, to wit, on Tuesday the 26th day of July, A. D. 1870, being the eighth day of the July, A. D. 1870, term of the said district court for the county of Santa Fé, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

THE TERRITORY, FOR THE USE OF WILLIAM W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL ET ALS.

And now comes the said defendants by their counsel and
122 move the court to set aside the verdict rendered herein, on a former day of this term, and grant them a new trial of this cause, which said motion is in the words and figures following, to wit:

District court, July term, 1870.

TERRITORY, FOR THE USE OF WILLIAM W. Griffin, ad'r of Charles S. Hinckley,
*vs.*
GEORGE T. BEALL AND OTHERS. } Debt.

The defendants, by their counsel, move the court to set aside the verdict in this cause rendered by the jury and grant a new trial, because—

1. The jury found against the law and the evidence in the case.
2. The court gave wrond and improper instructions to the jury upon its own motion.
3. The court gave wrong and improper instructions to the jury on the application of the plaintiff.
4. The court refused the application of the defendants to give
123 right and proper instructions to the jury in behalf of the defendants.
5. The court permitted the counsel for the plaintiff in his closing argument to the jury to make improper statements and use improper arguments to influence the opinions, action, and verdict of the jury.
6. The court permitted improper amendments to be made on the part of the plaintiff while the jury were trying the case.

7. The court refused to grant to the defendants a continuance of this cause.

8. The court refused to grant the defendants time sufficient to prepare the papers for a change of venue.

8. The court permitted improper testimony to be given to the jury on the part of the plaintiff.

9. The court permitted papers and written testimony to be given in evidence to the jury by the plaintiff, when no copies of the said papers and writings had been filed by the plaintiff, nor any sufficient reasons given by the plaintiff why such papers and writings had not been
124 filed, or the copies of the same.

10. The court permitted the plaintiff to have read as evidence to the jury the records of the probate court in the place of original papers and documents without requiring the plaintiff to file either the originals or copies, or any copy of the record read to the jury.

11. The court did not commit into the hands of the jury upon their retirement to agree upon a verdict any of the papers, documents, writings or records introduced in evidence in this case, and the jury retired without any of said written evidence in their hands or possession, and found their verdict without any of the said evidence being present with them.

12. The jury returned into court, and upon being asked by the court through its interpreter if they had agreed upon a verdict, replied they had, and which verdict was then handed by the jury to the interpreter and read, and was that they found in favor of the plaintiff what he claimed, without mentioning any sum or damages. The court
125 then, while the jury were detained standing before the court, caused to be stated to the jury a verdict in which damages in the sum of forty-eight thousand dollars were stated to the jury, and the court then asked the jury if they found damages in that sum, and the jury, without consulting together, answered the court in the affirmative, and were then discharged by the court, and the court then upon said verdict rendered the judgment now on record in this case.

13. The damages stated by the court to the jury, and by the court received of the jury as their verdict, are excessive.

14. The defendants have discovered since the trial new and important evidence which was unknown to them when the trial was had.

15. And for other reasons and causes to be found and apparent upon the face of the record in this case.

BENEDICT, CLEVER, AND TOMPKINS,
*Attorneys for Def'ts.*

On which said motion is the following endorsement, to wit:
126 The Territory, for the use of, &c., *vs.* George T. Beall et als. New trial. Filed in open court this 26th day of July, 1870. W'm Breeden, clerk.

And with the foregoing motion was filed the following affidavit, to wit:

District court, July term, 1870, Santa Fé County.

THE TERRITORY, FOR THE USE OF WILLIAM W. Griffin, ad'r, &c., of Charles S. Hinckley,
*vs.*
GEORGE T. BEALL AND OTHERS.

Abraham Staab, one of the defendants, upon being duly sworn, upon

his oath states that the defendants on the trial of this cause were surprised by the testimony of S. B. Elkins, plaintiff's attorney, who testified in their behalf.

Affiant saith that up to the moment said Elkins proposed him-
127 self to be sworn as a witness, the defendants had no knowledge that he intended to be or was to be a witness.

Affiant saith that it appears from the instructions given by the court to the jury that the evidence of the said Elkins was important to prove according to the court's opinion, as it was expressed, a sale by Beall of Hinckley's interest to Blake and Wardwell, in the firm of Hinckley, Blake and Wardwell.

That by reason of the said "surprise" during the trial the defendants were not prepared to offer in evidence the written facts contained in the original papers and records, copies of which have come to the knowledge of and been procured by the defendants present, since said trial, and which said copies are, first the bond given by said Elkins as administrator de bonis non of Hinkley's estate, marked B, and also the report of said Elkins to the probate court marked R, and the bond of W. W. Griffin, ad'r de bonis non, marked C; also the report of said Griffin to the probate court marked "D". This affiant, for the purpose of showing the contents of the said bonds and reports, adopts the copies as if copied into this affidavit, and for such purpose they are made part of this affidavit.

128 Affiant saith that these copies are offered to show that their contents would have a very material effect upon the testimony of said Elkins as to the weight it would have upon another trial, and that the effect would, as affiant believes, be favorable to the defendants.

Affiant saith that the subpœna issued to W'm V. B. Wardwell is returned and appears served upon him by a deputy sheriff on the 18th day of present month.

Affiant further saith that the fees were tendered to him, Wardwell, as witness, as appears by letter from him.

Affiant saith that the defendants will be able to have the testimony referred to in said copies at the next term, should a new trial be granted.

ABRAHAM STAAB.

Subscribed and sworn to before me this 26th day of July, 1870.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

The territory for the use, &c., vs. Geo. T. Beall et als., filed in
129 open court this 26th day of July, 1870. W'm Breeden, clerk.

Which motion being argued by counsel, and the court being sufficiently advised in the premises, overrules said motion.

And at the same time, to wit, on the 26th day of July, A. D. 1870, the following papers were filed, which are in the words and figures following, to wit:

The Territory of New Mexico to W'm V. B. Wardwell and Bates, Wardwell's book-keeper, greeting:

You, and each of you, are hereby commanded to appear forthwith before the district court for the first judicial district of said Territory, at the present term thereof, held within and for the county of Santa Fé at the court-house of said county, then and there to testify in a certain cause in said court pending, wherein the Territory, for the use of W.

W. Griffin, admi'st'r, is plaintiff and George T. Beall is defendant, on the part of the defendant, and this do you under the penalty of the law.

130 Witness the Hon. Joseph G. Palen, chief justice of the supreme court of said Territory and judge of the first judicial district court thereof, and the seal of said court, this 12th day of July, 1870.

[SEAL.] W'M BREEDEN, *Clerk.*

On which said subpœna is the following endorsement, to wit: Griffin, &c., vs. George Beall and others, subpœna.

Served on W. V. B. Wardwell, July 18, 1870, at 11.50 a. m.

JAMES LOGAN,
*Deputy Sheriff.*

This process was not served on Bates, Wardwell's book-keeper, as no such person is to be found at Mr. Wardwell's usual place of business.

JAMES LOGAN,
*Deputy Sheriff.*

Filed July 26, 1870.

W'M BREDEN,
*Clerk.*

131 TERRITORIO DE NUEVO MEJICO,
*Condado de Sante Fé:*

Por cuanto George T. Beall, ejecutor y administrador de los bienes del finado Charles S. Hinckley ha hecho su resignacion, como tal ejecutor y administrador, y ha sido aceptada por la corte de pruebas de dicho condado, sin haber administrado todos los vienes de dicho finado, y por cuanto S. B. Elkins ha applicado para ser nombrado administrador de bonis non de dicho estado, prestado el devido juramente y la correspondiente fianza requirida por la ley para el fiel cumplimiento de sus deberes, como tal administrador.

Por lo tanto, el Honorable Antonio Ortiz y Salazar, juez de pruebas en y por el condado de Santa Fé en el Territorio de Nuevo Mexico, ha nombrado, y por estas presentes nombrá y declará al referido S. B. Elkins, residente del condado y Territorio aniba dicho, administrador de bonis non, de todos los vienes, dineros, creditos, y propriedades del estado del finado Charles S. Hinckley, y que no estan aun administrados, que esan de el, al tiempo de su muerte, entendido, que el dicho administrador debe dar cuenta de ellos á esta corte, cada

132 un año, hasta la conclusion de su administracion, como requerido por la ley ó por orden de esta corte, ó cualesquiera otra corte teniendo jurisdiccion en el asunto.

En testimonio de lo cual pongo mi nombre y el sello de la corte de pruebas de dicho condado en Santa Fé, N. M., hoy 28 de Enero, A. D. 1869.

(Firmado) TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*

Certifico que las antecedentes letras de administracion han sido enregistradas por mi, hoy 28 de Enero de 1869.

(Firmado) TRINIDAD ALARID,
*Escribano.*

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Certifico, que el antecedente escrito, es una copia verdadera y correcta sacada del libro de regritros letra B, de letras de aministracion, etc., en la pagina 183 de dicho libro, el cual es tenido en la oficina de la corte de pruebas del conado de Santa Fé con ese objecto.

En testimonio de lo cual pongo mi nombre y el sello de la
133 corte de pruebas de dicho condado en Santa Fé de N. M., este dia 23 de Julio de 1870.

[SEAL.]

TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*
Por LUIS TAFOYA,
*Diputado.*

Of which said letters of administration the following is a correct translation:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Whereas George T. Beall, executor and administrator of the estate of the deceased Charles S. Hinckley, has made his resignation as such executor and administrator, which has been accepted by the probate court of said county, without having settled all the estate of the said deceased; and whereas S. B. Elkins has applied to be appointed administrator de bonis non of said estate, and having taken the required oath and filed the proper bond required by law for the faithful performance of his duties as such administrator:

134 Therefore the honorable Antonio Ortiz y Salazar, probate judge of the county of Santa Fé, in the Territory of New Mexico, has appointed, and by these presents appoints and confirms, the said S. B. Elkins, a resident of the county and Territory aforesaid, administrator de bonis non of all the effects, moneys, credits, and properties of the estate of the deceased Charles S. Hinckley, that were his at the time of his death, and which are not already settled, it being understood that the said administrator shall render account of them to this court each year, until the close of his administration, as required by law, or by order of this court, or any other court having jurisdiction in the matter.

In testimony whereof I place my name and the seal of the probate court of said county, at Santa Fé, N. M., this 28 day of January, A. D 1869.

[SEAL.] (Signed) TRINIDAD ALARID,
*Clerk of the Probate Court.*

I certify that the foregoing letters of administration have been recorded by me this 28th day of January, 1869.

(Signed) TRINIDAD ALARID,
*Clerk.*

135 TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I certify that the foregoing writing is a true and correct copy taken from book of records, letter B, of letters of administration, etc., page 183 of said book, which is kept in the office of the probate court of the county of Santa Fé for that purpose.

In testimony whereof I place my name and the seal of the probate court of said county, at Santa Fé, N. M., this 23d day of July, 1870.

[SEAL.] TRINIDAD ALARID,
*Clerk of the Probate Court,*
By LUIS TAFOYA,
*Deputy.*

On which said paper is the following endorsement, to wit:

The Territory, for the use, &c., vs. Geo. T. Beall et als. Filed in open court this 26th day of July, 1870. W'm Breeden, clerk.

136 TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Personalmente se presento ante me, Trinidad Alarid, escribano de la corte de pruebas del condado de Santa Fé en dicho Territorio, Stephen B. Elkins y bajo su juramente, declaro que el administraria bien y fielmente los bienes del finado Charles S. Hinckley, que hara reporte de los vienes que vengan a sus manos ó conocimiento de la masa de dicho finado, y que dara cuenta, pagara, y entregara, todos los vienes dineros, y propriedades de la dicha masa ó los herederos legales de dicho finado y que ejecutara la ultima voluntad testimentaria de dicho finado, y que hara todos los demas cosas relativas a la dicha administracion como requerido por la ley ó por orden de este corte ó cualesquiera otra corte teniendo jurisdiccion en el asunto con debída diligencia.

Asi Dios me ayuda.

(Firmado) S. B. ELKINS.

Juramentado y suscrito ante me hoy el dia 28 de Enero, A. D. 1869.

TRINIDAD ALARID,
*Escb'o de la Corte de P'bas Territorio de Nuevo Mejico,*
*Condado de Santa Fé.*

137 Certifico, que el antecedente escrito es una copia correcta y verdadera sacada del libro de registros de letras de administracion, etc., que es tenida, en la oficina de la corte de pruebas del condado de Santa Fé con tal objeto.

En testimonio de lo cual pongo mi nombre y el sello de la corte de pruebas de dicho condado en Santa Fé, de N. M., este dia 23 de Julio, A. D. 1870.

[SEAL.] TRINIDAD ALARID,
*Escribano de la Corte de Pruebas,*
Por LUIS TAFOYA,
*Diputado.*

Of which said affidavit the following is a correct translation, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Personally appeared before me, Trinidad Alarid, clerk of the probate court of the county of Santa Fé, in said Territory, Stephen B. Elkins, and upon his oath declares that he will well and faithfully administer
138 upon the estate of the deceased Charles S. Hinckley, that he will make report of the property that may come to his hands or knowledge, of the estate of said deceased, and that he will account for, pay over, and deliver all the effects, moneys, and property of the said estate to

the legal heirs of the said deceased, and that he will execute the last will of said deceased, and do all other things relative to said administration as required by law, or by order of this court, or any other court having jurisdiction in the matter, with due diligence.

So help me God.

(Signed) S. B. ELKINS.

Sworn to and subscribed before me this 28th day of January, A. D. 1869.

TRINIDAD ALARID,
*Clerk of the Probate Court,*
*Territory of New Mexico, County of Santa Fé.*

I certify that the foregoing writing is a correct and true copy taken from the record book of letters of administration, etc., which is kept in the office of the probate court of the county of Santa Fé for such purpose.

In testimony whereof I place my name and the seal of the
139 probate court of said county, at Santa Fé, N. M., this 23d day of July, A. D. 1870.

[SEAL.]

TRINIDAD ALARID,
*Clerk of the Probate Court,*
By LUIS TAFOYA,
*Deputy.*

On which said paper is the following endorsement, to wit:

The Territory, for the use, &c., vs. Geo. S. Beall et als. Filed in open court this 26th day of July, 1870. W'm Breeden, clerk.

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Sepan todos por estas presentes, como yo, Stephen B. Elkins, como principal, y Jacob Amberg, Michael Steck, Anastacio Sandoval, y Fernando Delgado, como fiadores, somos tenidos y firmemente obligados asi al Territorio de Nuevo Mejico en la suma de noventa y uno mil pesos, ($91,000 00,) el pago de lo cual nos obligamos bien y fielmente
140 juntos y seperadamente, tanto por nosotros mismos como por nuestros herederos, ejecutores, y administradores. En fe de lo cual ponemos nuestros nombres y sellos en Santa Fé, Nuevo Mejico, hoy el dia 28 de Enero, A. D. 1869.

La condicion de la arriba obligacion es tal, que por cuanto el dicho principal, Stephen B. Elkins, ha sido nombrado, administrador de bonis non cum testamento annexo de los vienes del finado Charles S. Hinckley, por el juez de pruebas de dicho condado en lugar de George T. Beall, habiendo resignado: Ahora si el dicho administrador da cuenta paga y entrega todos los dineros y bienes de la dicha masa a los herederos legales de dicho finado y ejecuta la ultima voluntad testamentaria de dicho finado y hace todas los demas cosas relativas a la dicha administracion como requerida por la ley, ó por orden de la corte de pruebas del condado de Santa Fé, o cualesquiera otra corte teniendo jurisdiccion en el asunto, entonces y en tal caso, esta fianza sera nula y de ningun valor, de lo contraria permanecera en plena fuerza y efecto.

| | | | |
|---|---|---|---|
| | (Firmado) | S. B. ELKINS. | [SELLO.] |
| 141 | (Firmado) | JACOB AMBERG. | [SELLO.] |
| | ( " ) | M. STECK. | [SELLO.] |
| | ( " ) | ANASTASIO SANDOVAL. | [SELLO.] |
| | ( " ) | FERNANDO DELGADO. | [SELLO.] |

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Certifico, que el antecedente escrito es una copia verdadera y correcta tomado del libro, letra "B," de registros de letras de administracion, etc., de los paginas 181 y 182 de dicho libro lo cual es tenido en la oficina de la corte de pruebas del condado de Santa Fé.

En fe de lo cual pongo mi nombre y el sello de la corte de pruebas de dicho condado en Santa Fé de N. M., este dia 23 de Julio, A. D. 1870.

TRINIDAD ALARID,
*Escribano de la Corte de Pruebas,*
Por LUIS TAFOYA,
*Diputado.*

Of which said bond the following is a correct translation, to wit:

142 TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Know all by these presents that I, Stephen B. Elkins, as principal, and Jacob Amberg, Michael Steck, Anastacio Sandoval, and Fernando Delgado, as securities, are held and firmly bound unto the Territory of New Mexico in the sum of ninety-one thousand dollars, ($91,000 00,) for the payment of which well and truly to be made, we jointly and seperately bind ourselves, our heirs, executors, and administrators. In witness whereof we place our names and seals, at Santa Fé, New Mexico, this 28th day of January, A. D. 1869.

The condition of the above obligation is such that whereas the said principal, Stephen B. Elkins, has been appointed administrator de bonis non cum testamento annexo of the estate of Charles S. Hinckley, deceased, by the probate judge of said county, in place of George T. Beall, resigned: Now, if the said administrator shall account for, pay over, and deliver all the moneys and effects of the said estate to the legal heirs of the said deceased, and execute the last will of said
143 deceased, and do all other things relative to the said administration, as required by law or by order of the probate court of the county of Santa Fè, or any other court having jurisdiction in the matter, then, and in such case, this bond shall be null and of no value; otherwise it shall remain in full force and effect.

| | | |
|---|---|---|
| (Signed) | S. B. ELKINS. | [SEAL.] |
| ( " ) | JACOB AMBERG. | [SEAL.] |
| ( " ) | M. STECK. | [SEAL.] |
| ( " ) | ANASTACIO SANDOVAL. | [SEAL.] |
| ( " ) | FERNANDO DELGADO. | [SEAL.] |

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I certify that the foregoing writing is a true and correct copy taken from book letter B of reginter of letters of administration, etc., from pages 181 and 182 of said book, which is kept in the office of the probate court of the county of Santa Fé.

In witness whereof I place my name and the seal of the probate court of said county, at Santa Fé, N. M., this 23d day of July, A. D. 1870.

[SEAL.] TRINIDAD ALARID,
144 *Clerk of the Probate Court.*
By LUIS TAFOYA, *Deputy.*

On which said paper is the following endorsement, to wit:

The Territory, for the use, &c., vs. Geo. T. Beall et als. Filed in open court this 26 day of July, 1870. Wm Breeden, clerk.

*Report of S. B. Elkins, administrator de bonis non of the estate of Charles S. Hinckley, deceased.*

The undersigned begs leave to submit the following report of his transactions to the hon. probate judge of Santa Fé County:

The report of the executor, George T. Beall, fully shows the actual amount of property, etc., received by the undersigned. Of the $1,327 00 in funds received by him he has expended the sum of twenty-seven $\frac{50}{100}$ dollars, as his account, herewith filed and marked Ex. A, will show.

He regrets most exceedingly that he has been unable during his
145 administration to collect one dollar belonging to the estate, and has found it necessary to institute suit in the name of George T. Beall against Wardwell & Watts, in the county of Socorro, for the amount due on note to the estate; that he has not presented the note of A. B. Carey to him, the said Carey, for payment, for the reason that the note bears an endorsement payable at the convenience of said Carey, but recommends that his successor present the note for payment at once, as there still exists one claim unadjusted against the estate, and which should have been settled long ago. That Schedule B, herewith filed and made a part of his report, will show the assets belonging to said estate.

In addition to the same, it has come to the knowledge of the undersigned that the deceased, Charles S. Hinckley, was half-owner in the store-house used as a sutler's store at Fort Selden, New Mexico, worth from three to five thousand dollars, and that the same has been rented by the surviving partners, Charles Blake and W. V. B. Wardwell, since the death of said Charles S. Hinckley, but for what price the undersigned cannot state.

146 The undersigned further states that he has been unable to collect anything whatever from the surviving partners, or from George T. Beall, late executor, belonging to said estate, although his efforts have been repeated and earnest; that according to the report of the late executor, Beall, he sold and disposed of the entire interest of Charles S. Hinckley, deceased, in the firm of Hinckley, Blake and Wardwell, for forty-six thousand five hundred and thirty-eight $\frac{60}{100}$ dollars to said surviving partners, Charles Blake and W. V. B. Wardwell, which said sale is positively denied by said Blake and Wardwell; that said Blake and Wardwell have promised from time to time to pay the amount they owe the estate, but up to date the undersigned has failed to collect from them one dollar; that said Wardwell is doing business at Fort Craig, N. M., and Charles Blake has removed to Colorado Territory, having disposed of all his interests in the firm of Hinckley, Blake and Wardwell to said Wardwell, as the undersigned is informed and believes.

The undersigned states that he has no means of judging or forming an estimate of the value of the assets of said estate; that from the
147 best information he can gain from all sources, he believes the interest of Charles S. Hinckley in the firm of Hinckley, Blake and Wardwell was worth about sixty thousand dollars; but to realize one-fourth of this amount, a resort to courts must be had at once.

All of which is most respectfully submitted.

(Signed) S. B. ELKINS,
*Adm'r de bonis non of the estate of C. Hinckley, deceased.*

SANTA FÉ, N. M., *Oct'b'r* 22, 1869.

Sworn to and subscribed before me this 30th day of October, A. D. 1869.

(Signed) TRINIDAD ALARID, *Probate Clerk.*

El antecedente informe fue aprobado por la corte de pruebas, veanse los procedimientos de dicha corte, Noviembre 1° de 1869.

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Yo el infrascrito certifique, que el antecedente escrito es una verdedaro copia sacada de los registros tenidos en la oficina de la corte de pruebas del dicho condado y Territorio.

En fe de lo cual pongo me nombre official y sello de la corte
148 de pruebas de dicha condado en Santa Fé, N. M., este dia 23 de Julio, A. D. 1870.

[SEAL.]

TRINIDAD ALARID,
*Escribano de la Corte de Pruebas,*
Por LUIS TAFOYA, *Diputado.*

Of which foregoing Spanish writing the following is a correct translation, to wit:

The foregoing report was approved by the probate court. (See the proceedings of said court November 1st, 1869.)

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I, the undersigned, certify that the foregoing writing is a true copy taken from the records kept in the office of the probate court of said county and Territory.

In witness whereof I place my name officially and seal of the probate court of said county, at Santa Fé, N. M., this 23d day of July, A. D. 1870.

[SEAL.]

TRINIDAD ALARID,
*Clerk of the Probate Court.*
By LUIS TAFOYA, *Deputy.*

149 On which said paper is the following endorsement, to wit:

Filed in open court this 26th day of July, 1870. W'm Breeden, clerk.

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Sepan todos por estas presentes, como yo, W. W. Griffin, como principal, S. B. Elkins, Anastacio Sandoval, E. Andrews, y S. B. Wheelock como fiadores, somos tenidos y firmemente obligados hacia al Territorio de Nuevo Mejico en la suma de setenta y cinco mil pesos, ($75,000 00,) al pago de lo cual nos obligamos bien y fielmente, juntos y separademente, tanto por nosotros mismos, como por nuertros herederos, ejecutores y administradores. En fe de lo cual ponemos nuestros nombres y sellos en Santa Fé Nuevo Mejico hoy el dia 30 de Octubre A. D., 1869.

La condicion de la aniba obligacion es tal, que por cuanto el dicho principal, W. W. Griffin, ha sido nombrado administrador de bonis non cum testamento annexo de los bienes del finado Charles S. Hinckley
150 que no estan aun administrados por el hon. juez de pruebas del referido condado en lugar de S. B. Elkins, quien resigno, ahora si el dicho, administrador da cuenta paga y entriega todas los dineros, bienes, y propiedades de la dicha masa que vengan a su posecion y manos a los herederos legales de dicho finado y ejecuta la ultima voluntad testa-

mentaria de dicho finado y hace todas los demas cosas relativas a la dicha administracion como requerida por la ley ó por orden de la corte de pruebas del condado de Santa Fé, ó cualesquiera otra corte teniendo jurisdiccion en el asunto entonces y en tal caso esta fianza será nula y de ningun valor, pero delo contrario permanecerá en plena fuerza y efecto.

| | | |
|---|---|---|
| (Firmado) | W. W. GRIFFIN. | [SELLO.] |
| ( " ) | S. B. ELKINS. | [SELLO.] |
| ( " ) | ANASTASIO SANDOVAL. | [SELLO.] |
| ( " ) | E. ANDREWS. | [SELLO.] |
| ( " ) | S. B. WHEELOCK. | [SELLO.] |

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Personalmente se presento ante me Trinidad Alarid, escribano de la corte de pruebas del condado de Santa Fé en dicho Territorio, W. W. Griffin, y bajo su juramento declara, que el administrara bien y
151 fielmente los bienes del finado Charles S. Hinckley, que hara reporte de los bienes que vengan a sus manos ó conocimiento de la masa de dicho finado, que dara cuenta, pagara y entregara todos los dineros bienes y propiedades de la dicha masa a los herederos legales de dicho finado, y que ejecutara la ultima voluntad testamentaria de dicho finado y qui hara todos las demas cosas relativas a la dicha administracion como requerido por la ley ó por orden de esta corte ó cualesquiera otra corte teniendo jurisdiccion en el asunto con debida diligencia. Asi Dios me ayuda.

(Firmado) W. W. GRIFFIN.

Juramentado y suscrito ante me hoy 30 de Octubre, 1869.

TRINIDAD ALARID,
*Esc'bo de la Corte de Pruebas.*

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Certifico, que los antecedentes escritos son una copia verdadera y correcta tomado del libro letra B, de registros de fianzas, etc., de las paginas 214 y 215 de dicho libro el cual es tenido en la oficina de la corte de pruebas del condado de Santa Fé, con tal objeto.
152 En fe de lo cual pongo mi nombre y el sello de la corte de pruebas de dicho condado en Santa Fé de N. M., este dia 23 Julio de 1870.

[SEAL.]

TRINIDAD ALARID,
*Escribano de la Corte P'bas,*
Por LUIS TAFOYA,
*Diputado.*

Of which said documents the following is a correct translation, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Know all by these presents that I, W. W. Griffin, as principal, and S. B. Elkins, Anastacio Sandoval, E. Andrews, and S. B. Wheelock, as sureties, are held and firmly bound unto the Territory of New Mexico in the sum of seventy-five thousand dollars, ($75,000 00,) for the payment of which we bind ourselves well and faithfully, jointly and seperately, and also our heirs, executors, and administrators.

In testimony whereof we place our names and seals, at Santa Fé, New Mexico, this 30 day of October, A. D. 1869.

153 The condition of the above obligation is such, that whereas the said principal, W. W. Griffin, has been appointed administrator de bonis non cum testamento annexo of the effects of the deceased Charles S. Hinckley, which have not already been settled, by the hon. probate judge of the said county, in place of S. B. Elkins, who has resigned. Now, if the said administrator shall account for, pay over, and deliver all the moneys, effects, and property of the said estate that shall come into his possession and hands, to the legal heirs of the said deceased, and shall execute the last will and testament of the said deceased, and shall do all other things relative to said administration as required by law, or by order of the probate court of the county of Santa Fé, or any other court having jurisdiction in the matter, then, and in such case, this bond shall be null and of no value, otherwise it shall remain in full force and effect.

| | | |
|---|---|---|
| (Signed) | W. W. GRIFFIN. | [SEAL.] |
| ( " ) | S. B. ELKINS. | [SEAL.] |
| ( " ) | ANASTACIO SANDOVAL. | [SEAL.] |
| ( " ) | E. ANDREWS. | [SEAL.] |
| ( " ) | S. B. WHEELOCK. | [SEAL.] |

154 TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Personally appeared before me, Trinidad Alarid, clerk of the probate court of the county of Santa Fé, in said Territory, W. W. Griffin, and upon his oath declares that he will well and faithfully administer upon the estate of the deceased Charles S. Hinckley; that he will make report of the effects that shall come into his hands or knowledge pertaining to the estate of the said deceased; that he will account for, pay and turn over all the moneys, effects, and property of the said estate to the legal heirs of the said deceased, and that he will execute the last will and testament of said deceased, and that he will do all other things relative to said administration as required by the law or by order of this court, or any other court having jurisdiction in the premises, with due diligence. So help me, God.

(Signed) W. W. GRIFFIN.

Sworn and subscribed before me this 30 day of October, 1869.

TRINIDAD ALARID,
*Clerk of the Probate Court.*

155 TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I certify that the foregoing writings are true and correct copies taken from book, letter B, of records of bonds, etc., pages 214 and 215 of said book, which is kept in the office of the probate court of the county of Santa Fé for such purpose.

In testimony whereof I place my name and the seal of the probate court of said county at Santa Fé, N. M., this 23d day of July, 1870.

[SEAL.] TRINIDAD ALARID,
*Clerk of the Probate Court.*
By LUIS TAFOYA, *Deputy.*

On which said paper is the following endorsement, to wit:

The Territory, for the use, &c., vs. George T. Beall et als., filed in open court this 26th day of July, 1870. W'm Breeden, clerk.

156 SANTA FÉ, N. M., *March* 8, 1870.

Honorable Antonio Ortiz y Salazar, Judge of the Probate Court of Santa Fé County, New Mexico:

I have the honor to report for your information the following statement of receipts and expenditures by me as administrator de bonis non of the estate of Charles S. Hinckley, deceased, from the date of my appointment up to this time.

*W. W. Griffin, adm'r de bonis non, in ac. with the estate of Charles S. Hinckley, deceased.*

| | | | No. of voucher. | |
|---|---|---|---|---|
| 1869. | | | | |
| October | 30. | To amount cash received from S. B. Elkins | | 105 00 |
| " | 30. | " amount of value of interest of the estate in the San Pedro and Cañon del Agua land grants, etc., being one-twelfth of same, whole cost being $37,299\frac{38}{100}$ | | 3,108 25 |
| 1870. | | | | |
| February | 16. | " am't received from Asa B. Carey, note and interest | | 1,818 00 |
| " | 25. | " am't received from W. V. B. Wardwell on account of sale of house at Fort Selden, N. M | | 500 00 |
| 157 " | 26. | " am't received on note of Wardwell & Watts | | 722 50 |
| March | 4. | " am't received from W. V. B. Wardwell, being balance due estate on account of sale of house at Fort Selden | | 1,250 00 |
| | | Total received | | $7,503 78 |

CREDIT.

| | | | | |
|---|---|---|---|---|
| 1869. | | | | |
| October | 30. | By amount paid for stamps on official bond | 1 | 1 00 |
| " | 30. | " " " fees of probate clerk | 2 | 13 00 |
| November | 30. | " " " " " " " | 3 | 4 00 |
| 1870. | | | | |
| February | 16. | " " " approved account and interest of A. B. Carey | 4 | 439 22 |
| " | 25. | " " paid fees of clerk of district court | | 17 75 |
| " | 25. | " " " express charges on $500, received from Fort Craig | | 3 75 |
| March | 4. | " am't paid express charges on $1,250, received from Fort Craig | 7 | 12 00 |
| " | 5. | " amount paid balance of approved claim and interest of Arthur Latham | 8 | 1,296 86 |

| | | | | |
|---|---|---|---|---|
| " | 8. | " amt paid for additional stamp on note of A. B. Carey and postage and stamps to date..... | 9 | 1 31 |
| " | 8. | " am't of legacy transferred to Mrs. Lydia E. Allen, being $\frac{2}{3}$ of $\frac{1}{2}$ interest in the San Pedro and Cañon del Agua grants, &c., as provided in will of testator, being in value $\frac{2}{3}$ of $3,108\frac{28}{100}$. | | 2,072 19 |
| March | 8. | By amount transferred to Arthur Latham as above, being in value $\frac{1}{3}$ of $3,108,\frac{28}{100}$..... | | 1,036 09 |
| " | 8. | " amount of commission on $7,503 28, received at $2\frac{1}{2}$ %..... | | 187 59 |
| " | 8. | " amount of commission on $4,897$\frac{12}{100}$, paid out at $2\frac{1}{2}$ %..... | | 122 44 |
| | | " am't cash on hand to balance..... | | 2,296 58 |
| | | Total..... | | $7,503 78 |
| | | To balance on hand bro't down..... | | $2,296 58 |

RECAPITULATION.

| | | |
|---|---|---|
| Total amount received..... | | $7,503 78 |
| Paid out..... | $5,207 20 | |
| On hand..... | 2,296 58 | |
| | | $7,503 78 |

I also have on hand the note of Wardwell & Watts, dated January 6th, 1867, for the sum of two thousand six hundred and fourteen$\frac{19}{100}$ dollars, payable on demand, with interest at the rate of 12 p'r c't per annum.

There has been paid upon the said note the following sums, viz: May 1, 1867, $300; July 5, 1867, $250; August 24, 1868, $332$\frac{40}{100}$; February 26, 1870, $722$\frac{50}{100}$.

159 I have also on hand 917 shares of the stock of the Bay State Pinos Altos Mining Company, which so far as I am advised possess no particular value at this time.

It was ascertained by S. B. Elkins, esq., while administrator of the estate, that the estate was one-half owner of a store-house at Fort Selden, New Mexico. I have been informed by Mr. W. V. B. Wardwell that he as the agent of Mr. C. H. Blake, who was also one-half owner of the property, sold the same to Messrs. John E. Beers & Co. on the 25th day of November last for the sum of thirty-five hundred dollars.

Although I knew nothing of the sale until informed of it by Mr. Wardwell, and as I am informed the property cost much more than it was sold for, yet in view of the fact that the property is situated on a military reservation and can only be occupied at the pleasure of whoever happens to be commanding officer of that post, and the fee-simple being really in the United States, and should the post of Fort Selden be

160 abandoned, the property would be of little or no value, as it can only be used as a sutler store. I believe the sale was a good one for the estate, and agreed to acquiesce in the sale upon the receipt of the portion of the purchase money belonging to the estate. The amount, i. e., seventeen hundred and fifty dollars, has been received by me from

Mr. Wardwell, and I respectfully ask your honor to make an order authorizing me to join in a deed transferring said property to the purchasers.

Respectfully submitted.

(Signed) W. W. GRIFFIN,
*Adm'r de bonis non of the estate of C. S. Hinckley, dec'd.*

Sworn to and subscribed before me this 8th of March, A. D. 1870.

(Signed) TRINIDAD ALARID,
*Probate Clerk.*

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Certifico que el antecedente escrito es una verdadera y correcta copia sacada de los registros de la oficina de la corte de pruebas de dicho condado siendo el registros de el informe arriba demostrado de W. W. Griffin.

161 En testimonio de lo cual pongo mi nombre y sello oficial este dia 23 de Julio, A. D. 1870.

[SEAL.] TRINIDAD ALARID,
*Escribano de la Corte de Pruebas,*
Por LUIS TAFOYA,
*Diputado.*

Of which said certificate the following is a correct translation, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I certify that the foregoing writing is a true and correct copy taken from the records of the office of the probate court of said county, being the records of the above-exhibited report of W. W. Griffin.

In witness whereof I place my name and official seal this 23d day of July, A. D. 1870.

[SEAL.] TRINIDAD ALARID,
*Clerk of the Probate Court.*
By LUIS TAFOYA, *Deputy.*

On which said paper is the following endorsement, to wit:

162 The Territory, for the use, &c., *vs.* Geo. T. Beall et als. Filed in open court this 26th day of July, 1870. W'm Breeden, clerk.

And be it further remembered that afterwards, to wit, on the 26th day of July, A. D. 1870, being the 8th day of the July, A. D. 1870, term of the said district court for the said county of Santa Fé, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

THE TERRITORY, FOR THE USE OF WILLIAM W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL ET ALS.
} Debt.

And now come the said defendants, by their counsel, and move the court to arrest the judgment upon the verdict rendered in this cause on

a former day of this term, which said motion is in the words and figures following, to wit:

163 THE TERRITORY OF NEW MEXICO, USE of W. W. Griffin, adm'r estate of C. S. Hinckley, dec'd,
*vs.*
GEORGE T. BEALL AND OTHERS.

The defendants, by their counsel, move the court to arrest the judgment in said cause for the reasons that the court erred in permitting the plaintiff to amend his petition while there was a plea in abatement on file in said cause undisposed of, and that the court erred in proceeding with said cause without a trial upon said plea in abatement, and because the court erred in overruling the demurrer to the amended petition in said cause, and for other good and sufficient reasons apparent on the face of the record in said cause.

BENEDICT, CLEVER & TOMPKINS,
*Attorneys for Defendants.*

On which motion is the following endorsement, to wit:
The Territory use, &c., *vs.* George T. Beall et als. Motion in arrest of judgment. Filed in open court this 26th day of July, 1870.
164 W'm Breeden, clerk.

And the court being sufficiently advised in the premises, overrules said motion.

And be it further remembered that afterwards, to wit, on Wednesday, the 27th day of July, A. D. 1870, being the ninth day of the July, 1870, term of the said district court for the said county of Santa Fé, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

THE TERRITORY, FOR THE USE OF W. W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased, } Debt.
*vs.*
GEORGE T. BEALL ET ALS.

And now come the defendants, by their counsel, and move the court to grant them an appeal in this cause to the supreme court of the Territory of New Mexico, and file now in court the affidavit required by law; which said motion and affidavit are in the words and figures
165 following, to wit:

District court, July term, 1870.

TERRITOTY, USE OF WILLIAM W. GRIFFIN, ad'r of Charles S. Hinkley, } Debt.
*vs.*
GEORGE T. BEALL AND OTHERS.

The defendants, by their attorneys, move the court for an appeal of this case to the supreme court of this Territory.

BENEDICT, CLEVER & TOMPKINS,
*Att'ys for Def'ts.*

On which said motion is the following endorsement, to wit:
W. W. Griffin vs. George T. Beall and others. Filed in open court this 27th day of July, 1870. W'm Breeden, clerk.

THE TERRITORY OF NEW MEXICO, USE OF W. W. Griffin, adm'r, &c., *vs.* GEORGE T. BEALL ET ALS. } Debt.

Abraham Staab, one of the defendants in the above entitled
166 cause, being duly sworn, states that an appeal is not taken in this cause for the purpose of vexation or delay, but because this affiant believes that the appellants are aggrieved by the judgment or decision of the court in said cause.

ABRAHAM STAAB.

Subscribed and sworn to before me this 27th day of July, A. D. 1870.
W'M BREEDEN,
*Clerk.*

On which said affidavit is the following endorsement, to wit:
The Territory, use, &c., vs. George T. Beall and others. Affidavit for appeal filed in open court this 27th day of July, 1870. W'm Breeden, clerk.

Whereupon it is ordered by the court that such appeal be granted; and it is further ordered that execution on the judgment rendered in this cause on a former day of this term be stayed upon the defendants, filing with the clerk of this court a good and sufficient appeal bond
167 herein in the sum of ninety-six thousand dollars, and the approval and acceptance of such bond by said clerk.

And be it further remembered that afterwards, to wit, on the 27th day of July, A. D. 1870, the following appeal bond in the above entitled cause was filed by the said defendants, which said bond is in the words and figures following, to wit:

Know all men by these presents, that we, the undersigned, Emanuel Spiegelberg, Bernhard Seligman, Abraham Staab, and Jose Manuel Gallegos, as principals, and Lehman Spiegelberg, Felipe Chaves, Manuel Antonio Otero, and José Leandro Perea, as their securities, are held and firmly bound unto the Territory of New Mexico, for the use of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased, in the sum of ninety-six thousand dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly
168 by these presents. Sealed with our seals, and dated the twenty-sixth day of July, one thousand eight hundred and seventy.

The condition of the above obligation is such, that whereas a judgment has been rendered in the district court for the county of Santa Fé, Territory of New Mexico, at the present July term thereof, A. D. 1870, against George T. Beall, Emanuel Spiegelberg, Sigmund Seligman, Abraham Staab, and José Manuel Gallegos, and in favor of said Territory, for the use of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased, for the sum of forty-eight thousand dollars, and costs of suit, from which said jugdment the said defendants have this day prayed an appeal to the supreme court of the Territory of New Mexico, at its next regular term, which said appeal

has been granted: Now, if the said appellants shall prosecute their said appeal with due diligence to a decision in the said supreme court, and that if the judgment or decision appealed from be affirmed or the appeal be dismissed, that the said appellants will perform the
169 judgment of the court, and that they will also pay the costs and damages that may be adjudged against them upon their said appeal, then and in that case this obligation to be null and void; otherwise, to remain in full force and virtue.

EMANUEL SPIEGELBERG,
By L. SPIEGELBERG, *Att'y.* [SEAL.]
BERNHARD SELIGMAN. [SEAL.]
ABRAHAM STAAB. [SEAL.]
JOSÉ MANUEL GALLEGOS. [SEAL.]
LEHMAN SPIEGELBERG. [SEAL.]
FELIPE CHAVES. [SEAL.]
MANUEL A. OTERO. [SEAL.]
JOSÉ L. PEREA. [SEAL.]

UNITED STATES OF AMERICA,
*Territory of New Mexico, County of Santa Fé:*

This day personally appeared before me William Breeden, clerk of the United States district court for the first judicial district of the Territory of New Mexico, Emanuel Spiegelberg, by Lehman Spiegelberg, his attorney in fact, Bernhard Seligman, Abraham Staab, José
170 Manuel Gallegos, Lehman Spiegelberg, Felipe Chaves, Manuel A. Otero, and José Leandro Perea, each and all of whom are to me well known, who signed and sealed the foregoing bond and acknowledged each for himself that they executed the same of their own voluntary act and will for the purposes therein contained.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Santa Fé, N. M., this 27th day of July, A. D. one thousand eight hundred and seventy.

[SEAL.] W'M BREEDEN,
*Clerk.*

The foregoing bond approved by me as to form, the manner of execution, and the sufficiency of the sureties thereon, at Santa Fé, N. M., the 27th day of July, A. D. 1870.

WM. BREEDEN,
*Clerk 1st Judicial District Court, New Mexico.*

171 On which said bond is the following endorsement, to wit:
The Territory, use, &c. vs. George T. Beall et als. Appeal bond. Filed in my office this 27th day of July, 1870. W'm Breeden, clerk.

And be it further remembered that afterwards, to wit, on the 30th day of July, A. D. 1870, the following bills of exceptions were filed by the defendants in the foregoing cause, which said bills of exceptions, are in words and figures following, to wit:

District court, July term, 1870.

THE TERRITORY, FOR THE USE OF WILLIAM W. Griffin, ad'r, &c., of Charles S. Hinckley,
*vs.*
GEORGE T. BEALL AND OTHERS. } Debt.

Be it remembered that in the course of the proceedings in this case at

said term the defendants filed the affidavit of Lehman Spiegel-
172 berg, agent of the defendant Emanuel Spiegelberg, as follows, to wit:

THE TERRITORY OF NEW MEXICO, FOR THE use of W. W. Griffin, ad'r, &c.,
*vs.*
GEORGE T. BEALL AND OTHERS.

Lehman Spiegelberg, agent of Emanuel Spiegelberg, one of the defendants, being duly sworn, upon his oath states that the defendants in this cause cannot safely go to trial in the above-entitled cause at the present term of this court, on account of the absence of material witnesses and their testimony on behalf of the said defendants at this term. He saith that they expect to prove by one J. R. Hunt, that for some time before and after the death of Charles S. Hinckley, he, the said Hunt, was the book-keeper of the firm of Hinckley, Blake and Wardwell, at Fort Craig, New Mexico; that about that time, or a short time after the death of said Hinckley, the said George T. Beall came
173 to Fort Craig aforesaid, at the place of business of the said firm, to ascertain what interest, and the amount which the said Hinckley had in the said firm; that the said Hunt as such book-keeper had a more thorough, accurate, and full knowledge of all the property, credits, debts, liabilities, and circumstances of said firm than any other person in the employ of the firm of Hinckley, Blake & Co., before and at the time of the death of the said Hinckley. That at the request of the said surviving partners, and of said Beall, said Hunt made a full, thorough, and correct examination and statement of the entire condition of the said firm, with all the interest that the said Hinckley had in the same, and informed the said Beall of the said statement, and that the said Hunt omitted in no way in furnishing a true and correct statement of the condition of said firm, and the interest in the same at the time of the decease of the said Hinckley.

This affiant further states that the said defendants further expect to prove by the said J. R. Hunt, that at the time said Beall so
174 visited Fort Craig for the purposes aforesaid, the said J. R. Hunt was the person who represented the surviving partners of the said Hinckley, deceased, in the examination of the papers, stocks, books, property, and all other assets and other matters belonging to the said firm, and that the said George T. Beall made no sale or transfer of the interest of said estate to the said surviving partners, and that the said George T. Beall, executor as aforesaid, in no manner whatever converted to his or said surviving partner's use the interest of the said estate of the said Hinckley, deceased.

This affiant further states that the said defendant, Emanuel Spiegelberg, who is a resident of the State of New York, was not apprised and did not know of the pendency of this suit until the twenty-sixth day of May, one thousand eight hundred and seventy, and that immediately upon his being so apprised, he made preparations, and communicated by letter to this affiant, as his agent, the fact that he had received information that notice citing him had been published in this suit, and
175 instructed affiant to employ counsel in his, the said Emanuel Spiegelberg's defense; that the counsel instructed by him to be employed were then in the southern part of this Territory, professionally engaged, attending the courts there being holden, and did not return to Santa Fé until about the first day of the present month; that since

such return there has been no sufficient time to take the deposition of the said J. R. Hunt, who, as this affiant has been lately informed for the first time, is a resident of the city of New Orleans, in the State of Louisiana. This affiant further saith that he knows of no witness by whom he can be surely able to prove fully the material and essential facts above mentioned as by said Hunt.

Affiant says that the said defendants may be able to prove some of said facts by William V. B. Wardwell and one Bates, residents of Fort Craig, in the county of Socorro, in this Territory, and that the said Bates was a clerk in the business of the said firm of Hinckley, Blake and Wardwell, at or about the time of the death of the said Hinckley, and
176 that he succeeded the said Hunt as bookkeeper of the surviving partners, and has continued in the employ of the said surviving partners, and that during the present month he has gone on business of the said Wardwell to the State of Texas, where he now is, as this affiant is informed and believes. Affiant saith that he is informed and believes that all of the defendants present, except the said Emanuel Spiegelberg, by their counsel, took a subpœna from the clerk of this court in the fore part of the last week for the said Wardwell and Bates, and enclosed the same in a letter duly stamped, and deposited the same in the post office at Santafé, directed to be forwarded to the sheriff of Socorro County, with special request that the sheriff or his deputies serve the same as soon as possible upon the arrival of the said subpœna in the hands of the said sheriff or his deputies to be served. Furthermore, that the said counsel, at the time when the said subpœna was sent as aforesaid, wrote to James Logan, esq., the postmaster at the county seat of said county of Socorro, specially requesting him to see that the said
177 letter be immediately imparted to the said sheriff or deputies, and that he request the said sheriff or deputies to lose no time in serving the said subpœna, or words to that effect, as this affiant is informed and verily believes.

Affiant further saith that he has been informed from private sources, and verily believes, that the said subpœna has been served upon the said Wardwell if not upon the said Bates, and as to the latter, affiant has not sufficient information to enable him to state. He saith that, from information, and as he verily believes, he has learned that said Wardwell will arrive at this place before early next week. Affiant further states that it appears upon the record of this cause, that all of the defendants, except the said Beall, are sued jointly as securities of the said Beall as executor as aforesaid. Furthermore affiant saith that he, with those who are sureties together with the said Emanuel Speigelberg, have confidently expected that the said Beall would certainly be present at this term of court to specially defend himself and all
178 of the securities in this suit, but that he is not present, nor has he informed any of the said securities of the cause of his absence. Affiant supposes the cause to be that he is an officer in the United States Army, and is stationed in St. Louis, Missouri, and may have failed to obtain from superior authority leave of absence, so that he could be present at this term, and affiant cannot state whether the said Beall will be present or not at any future day during the present term of this court. Affiant saith that said Emanuel Spiegelberg, and his co-securities in this case, now present, expect to be able to procure the presence of the aforementioned witnesses, or their depositions, to be used on the trial of this cause at the next term of this court, and that this applicaiion is not made for vexation or delay, but that justice may be done in the premises, and that the failure of the presence of the

said witnesses, or the depositions of either, has not resulted from the connivance or consent of the said defendants.

LEHMAN SPEIGELBERG.

Subscribed and sworn to before me this 21st day of July, A. D. 1870.

179 [SEAL.] WM. BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

The Territory, for the use of W. W. Griffin, administrator, &c., vs. Geo. T. Beall et als. Filed in open court this 21st day of July, 1870. Wm. Breeden, clerk.

And also filed the motion of the defendants for a continuance, as follows, to wit:

District court, July term, 1870.

TERRITORY, USE OF WILLIAM W. GRIFFIN, Ad'r, &c.,
*vs.*
GEORGE T. BEALL AND OTHERS.

The defendants, by their attorneys, move the court for a continuance of this cause and in support of this motion.

BENEDICT, CLEVER AND TOMPKINS, *Att'ys for Def'ts.*

180 On which said motion is the following endorsement, to wit:

W. W. Griffin vs. George T. Beall. Filed in open court this 21st day of July, 1870. Wm. Breeden, clerk.

And upon the hearing of said motion and affidavit, as also the affidavit of Abraham Staab, herein filed, and the affidavit upon which the continuance was granted in this cause at the last February term of this court having been read in opposition to said motion, which affidavit is in the words and figures following, to wit:

Santa Fé district court, February term, 1870.

THE TERRITORY, FOR THE USE OF W. W. Griffin, &c.,
*vs.*
GEORGE T. BEALL AND OTHERS.

The said George T. Beall, being duly sworn, upon his oath states that the said defendants cannot safely proceed to trial at the present
181 term of this court on account of the absence of material witnesses, not now present at this term of court, among which is J. R. Hunt, who, to the best of affiant's knowledge and belief, is a resident of the city of New Orleans, in the State of Louisiana, and who has not been in this Territory since the commencement of this suit. This affiant expects to prove that, for more than a year before the death of the said Charles S. Hinckley, he was clerk and bookkeeper of the firm of Hinckley, Blake and Wardwell, at Fort Craig, in the Territory of New

Mexico, and, at the time of said death, thoroughly knew the condition, business, and circumstances of the said firm, and the interest which the said Hinckley had, as to capital, profits, or otherwise, which he had in the said partnership. Affiant also expects to prove by the said J. R. Hunt that a short time after this affiant was appointed executor, he visited Fort Craig for the purpose of examining and ascertaining the interest of the said Hinckley's estate in the said firm. That the books of said firm were presented by Blake and Wardwell, surviving part-
182 ners of the said firm, and that said J. R. Hunt was the person who represented the survivors in the examination of the papers, stocks, books, property, and all other assets and matters belonging to the said firm. This affiant expects to prove by the said Hunt that the sum of forty-six thousand five hundred and thirty-eight dollars and sixty-two cents was the entire amount of interest that appeared, after a full examination, as belonging to the estate of the said Charles S. Hinckley; furthermore that the said sum was the result of a fair rendition of accounts of said survivors with this affiant; furthermore that this affiant made no sale of the said interest to the said survivors; furthermore that the said affiant in no manner whatever converted to his or their use the interest of the said Hinckley's estate.

Affiant saith that the said Hunt continued as book-keeper in the said business at Fort Craig, N. M., for more than a year after the said examination of the accounts, and then left this Territory, and has not
183 returned. Affiant saith that he knows of no other person by whom he can prove the facts herein above stated as to the business of said firm, and condition of said accounts, and showing the interest of said Hinckley in said firm, except the said Hunt. He states that he may be able to prove some parts of the condition of said firm at the time of said Hinckley's death by other witnesses, but the full condition, with this affiant's transaction with the said survivors, by no other person.

Affiant saith that he expects to be able to procure the testimony of the said Hunt by the next term of this court; that no process has been taken out to summon said witness, as the same could not have been served upon said witness, and would have been wholly unavailing; that this application is not made for vexation or delay, but to enable the defendants to make their full and just defense in this cause.

GEORGE T. BEALL.

Subscribed and sworn before me this 5th day of March, A. D. 1870.
[SEAL.] WM. BREEDEN,
*Clerk.*

184 On which said affidavit is the following endorsement, to wit:
The Territory of New Mexico, for the use, &c., vs. Geo. T. Beall et als. Affidavit for continuance. Filed in open court this 5th day of March, 1870. Wm. Breeden, clerk.

The court did deny and overrule said motion, and refused a continuance of this cause.

And be it further remembered, that immediately upon the court's denying and refusing to grant and allow said continuance, the defendants, by their attorneys, moved the court to grant them sufficient time to prepare the papers to apply for a change of venue in this case, and the court denied and refused the granting of the time moved for, for the reason that the case had been continued at a former term, and the case had been set down for trial or disposition, as the application should

have been ready, as further time could not be granted to prepare the
185 application for a change of venue, but ordered a jury immediately to be called to try the case. To the decision of the court in overruling the motion for a continuance, and its action in refusing sufficient time to prepare the papers for a change of venue, the defendants, by their counsel, did then and there except, and pray that this, their bill of exceptions, be now signed and sealed by the court, which is done accordingly.

J. G. PALEN, *C. J., &c.* [SEAL.]

On which said bill of exceptions is the following endorsement, to wit: W. W. Griffin, ad'r, vs. George T. Beall. Exceptions. Filed in my office this 30th day of July, 1870. Wm. Breeden, clerk.

District court, July term, 1870.

THE TERRITORY, FOR THE USE OF W. W. Griffin, ad'r of Charles S. Hinckley,
186 *vs.*
GEORGE T. BEALL AND OTHERS. } Debt.

Be it remembered, that on the trial of this cause, when the court was about to give its instructions to the jury which tried this case, the defendants asked and moved the court to give the jury the following instructions, to wit:

THE TERRITORY, USE, &C., *vs.* GEORGE T. BEALL ET ALS.

The defendants, by their counsel, move the court to instruct the jury that unless they believe from the evidence that the defendant, George T. Beall, failed to perform his duty as administrator in the administration of the estate of C. S. Hinckley, dec'd, they must find for the defendants.

That unless they believe from the evidence that the defendant, George T. Beall, sold a portion of the property belonging to the estate of the said C. S. Hinckley, and converted the same to his own use, they must find for the defendants.

That unless they believe from the evidence that the amount due
187 to the estate of C. S. Hinckley, and from Messrs. Blake and Wardwell, has been entirely lost to said estate, and that loss resulted from the acts or negligence of the said defendant, George T. Beall, they must find for the defendants.

That the jury, in determining whether or not the said George T. Beall complied with all of his duties as such administrator, are authorized to take into consideration the fact that he made his returns to the probate court, which returns were by the probate court accepted and approved, and also that the said probate court accepted the resignation of said Beall of the trust as such administrator.

That Messrs. Blake and Wardwell, as the surviving partners of the deceased Hinckley, had, by law, the right to the possession and disposition of the goods, wares, and merchandise belonging to the partnership of which the said deceased was a member, and also entitled to collect the debts due said firm.

On which said papers is the following endorsement, to wit:
188 Filed in my office this 22nd of July, 1870. Wm. Breeden, clerk.

And the court denied and refused to give the said instructions or any part thereof to the jury, to which refusal and action of the court the defendants, by their counsel, did then and there except, and now pray that this, their bill of exceptions, be now signed and sealed by the court, which is done accordingly.

J. G. PALEN, *C. J., &c.* [SEAL.]

On which said bill of exceptions is the following endorsement, to wit: Wm. W. Griffin, ad'r, vs. George T. Beall. Exceptions. Instructions of def'ts. Filed in open court, this 30th day of July, 1870. Wm. Breeden, clerk.

District court, July term, 1870.

189 TERRITORY, FOR THE USE OF WILLIAM W. Griffin, ad'r, &c., of Charles S. Hinckley,
*vs.*
GEORGE T. BEALL AND OTHERS.

Be it remembered, that on the trial of this cause the court gave the following instructions to the jury which sat in the case, and which are as follows, to wit:

On the part of the plaintiff in this cause, it is contended that the defendant, George T. Beall, as administrator of Charles S. Hinckley, deceased, sold the interest of Hinckley's estate in the property and effects of the firm of Hinckley, Blake and Wardwell, to Blake and Wardwell, the surviving partners of the firm, for the sum of $46,588 00, on credit, without taking any security for the same. In the opinion of the court, the statements of the inventory filed by Beall in the probate court, which are evidence in the cause, and the evidence of Stephen B. Elkins, establishes the fact of such sale; by selling this property on credit,

190 Beall becomes personally liable in law to the estate for the amount for which the property was sold, and if the jury from the evidence arrive at the same conclusion with the court, they should find for the plaintiff, and assess his damages at $41,556, with interest at six per cent., such interest to commence six months after the inventory was filed, January 10, 1867.

The approval by the probate judge of the annual reports of Beall did not release or discharge Beall from his liability, or in any way affect such liability as regards the matter in controversy in this suit.

In this case the fact that Elkins or Griffin as administrator may have failed to sue, does not affect Beall's liability on his bond in any way.

If an executor sells at private sale property of an estate, and fails to collect the amount due, he is personally responsible.

In civil cases the court is the judge of the law, and the jury is bound by the instructions of the court.

191 The fact that Elkins, as administrator, demanded any money from Blake and Wardwell, does not relieve George Beall of any of his responsibility for any of his acts as administrator.

To the giving of which instructions by the court the defendants, by their counsel, did then and there except, and now pray that this their bill of exceptions be now signed and sealed by the court, which is done accordingly.

J. G. PALEN, *C. J., &c.* [SEAL.]

On which said bill of exceptions is the following endorsement, to wit:

Wm. W. Griffin, ad'r, vs. George T. Beall and others. Exceptions. Filed in open court this 30th day of July, 1870. Wm. Breeden, clerk.

District court, July term, 1870.

THE TERRITORY, FOR THE USE OF WM. W. Griffin, ad'r, &c., of Charles S. Hinckley,
*vs.*
192 GEORGE T. BEALL AND OTHERS.

Be it remembered that on the trial of this cause before the jury, the plaintiff offered to introduce as evidence to the jury a bond, as the bond set forth and described in the petition, and the defendants, by their counsel, objected to the introduction of said bond, upon the ground of a variance between the bond declared upon in the petition, and the copy which had been filed with the petition and the one offered to be introduced, which was the original bond set forth in the petition inasmuch as the bond declared upon, and the copy filed, set forth the person deceased to be Charles S. Hinckley, and the one offered to be introduced stated that the person deceased, whose estate was to be administered, was one C. S. Hinckley, and thereupon the court permitted the copy of the bond on file to be amended so as to read C. S. Hinckley instead of Charles S. Hinckley, and then permitted the probate judge to read the original bond written in the book of the office of the probate court and signed by the defendants, which was admitted to be the orig-
193 inal bond, and which bonds is as follows, to wit:

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Sepan todos por estes presentes, como yo, George T. Beall como principal y Sigmund Seligman, Emanuel Spiegelberg, Abraham Staab, Miguel E. Pino, y Jose Manuel Gallegos, como fiadores, somos tenidos y firmemente obligados aci al Territorio de Nuevo Mejico en la suma de ciento veinte mil pesos, ($120,000 00,) al pago de lo cual nos obligamos bien y fielmente, juntos y separademente tanto por nosotros mismos, como por nuestros herederos, ejecutores ó administradores. En fe de lo cual ponemos nuestros nombres y sellos en Santa Fé, de Nuevo Mejico, este dia dos de Noviembre del año del Senor de mil ochocientos sesenta y seis.

La condicion de la arriba obligacion es tal, que por cuanto, el dicho principal, George T. Beall, asido nombrado este dia por el juez de pruebas, de dicho condado administrador y ejecutor de los bienes del finado C. S. Hinckley, segun la ultima disposicion testamentaria de
194 dicho finado: Ahora si el dicho ejecutor y administrador da cuenta, paga y entrega todos los dineros y bienes de la dicha masa, a los herederos legales, de dicho finado y ejecuta la ultima voluntad testamentaria de dicho finado y hace todos los demas cosas relativas a la dicha administracion, como requerido por la ley, ó por orden de la corte de pruebas, del condado de Santa Fé o cualesquiera otra corte teniendo jurisdiccion en el asunto, entonces y en tal caso esta fianza será nula y de ningun valor de lo contrario, quedará en toda su fuerza y efecto.

| | | |
|---|---|---|
| (Firmado) | GEORGE T. BEALL. | [SELLO.] |
| (Firmado) | A. STAAB. | [SELLO.] |
| (Firmado) | E. SPIEGELBERG. | [SELLO.] |
| (Firmado) | S. SELIGMAN. | [SELLO.] |
| (Firmado) | MIGUEL E. PINO. | [SELLO.] |
| (Firmado) | J. M. GALLEGOS. | [SELLO.] |

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Yo el infrascrito escribano de la corte de pruebas, en y por el condado de Santa Fé en el Territorio de Nuevo Mejico, certifico, que la
195 antecedente fianza es una copia verdadera y correcta del original segun se halla enregistrada en el libro letra "B," registros de letras fianzas de administradores, etc, paginas 98 y 99 el cual es tenido en esta oficina con tal objecto.

En testimonio de lo cual pongo mi nombre y el sello de dicha corte en Santa Fé, N. M., hoy 28 de Enero, A. D. 1869.

[SEAL.] TRINIDAD ALARID,
*Escribano de la Corta de Pruebas.*

Of which said bond the following is a correct translation, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Know all men by these presents that I, George T. Beall, as principal, and Sigmund Seligman, Emanuel Spiegelberg, Abraham Staab, Miguel E. Pino, and Jose Manuel Gallegos, as securities, are held and firmly bound unto the Territory of New Mexico in the sum of one hundred and twenty thousand dollars, ($120,000 00,) for the payment of which we well and faithfully, jointly and seperately, bind ourselves, and
196 also our heirs, executors, and administrators. In witness of which we place our names and seals, at Santa Fé, New Mexico, this second day of November, in the year of our Lord one thousand eight hundred and sixty-six.

The condition of the above obligation is such, that whereas the said principal, George T. Beall, has this day been appointed by the probate judge of said county administrator and executor of the estate of C. S. Hinckley, deceased; now, if the said executor and administrator shall account for, pay, and turn over all the moneys and property of the said estate, to the legal heirs of the said deceased, and shall execute the last testamentary will of the said deceased, and shall do all other things relative to the said administration, as required by law, or by the order of the probate court of the county of Santa Fé, or any other court having jurisdiction in the matter; then and in such case this bond shall be null and of no effect, otherwise it shall remain in full force and effect.

(Signed) GEORGE T. BEALL. [SEAL.]
(Signed) A. STAAB. [SEAL.]
197 (Signed) E. SPIEGELBERG. [SEAL.]
(Signed) S. SEGILMAN, [SEAL.]
(Signed) MIGUEL E. PINO. [SEAL.]
(Signed) J. M. GALLEGOS. [SEAL.]

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I, the undersigned, clerk of the probate court in and for the county of Santa Fé, in the Territory of New Mexico, certify that the foregoing bond is a true and correct copy of the original, as recorded in book, letter "B," of records of letters, bonds of administrators, etc., pages 98 and 99, which is kept in this office for that purpose.

In testimony whereof, I place my name and the seal of said court, at Santa Fé, N. M., this 28th day of January, 1869.

[SEAL.] TRINIDAD ALARID,
*Clerk of the Probate Court.*

On which said bond is the following endorsement, to wit:

William W., Griffin, adm'r de bonis non, *vs.* Debt on bond,
198 George T. Beall et als. Copy of bond sued on. Filed in my office this 8th day of November, 1869. Wm. Breeden, clerk.

To which rulings, actions, and decisions of the court, the defendants did then and there, by their counsel, except, and now pray that this, their bill of exceptions, be signed and sealed by the court, which is done accordingly.

J. G. PALEN, *C. J., &c.* [SEAL.]

On which said bill of exceptions is the following endorsement, to wit: Territory use of Wm. W. Griffin, *vs.* George T. Beall and others. Filed in my office this 30th day of June, 1870. Wm. Breeden, clerk.

District Court, July term, 1870.

THE TERRITORY, FOR THE USE OF
199 William W. Griffin, ad'r of Charles S. Hinckley,
*vs.*
GEORGE T. BEALL AND OTHERS.

Be it remembered, that on the trial of this cause before the jury, the plaintiff offered to have read the probate court record of the county of Santa Fé, a record purporting to be a copy of the letters of administration and testamentary granted to George T. Beall, upon the estate of Charles S. Hinckley, which the probate judge, Antonio Ortizy Salazar, stated was a true copy of the original letters of administration granted to said George T. Beall by him, whom he supposed had the original, as it was the custom of that office to record all such papers, and deliver the originals to the parties, to which reading of the said letters as evidence in this case the defendants, by their counsel, objected, upon the grounds that the record offered to be read and introduced was only a recorded copy of letters of administration and testamentary, and not the original, and also, that no copy of the said record nor of the original letters have been filed with the petition, or at any time with the
200 cause; but the court overruled the said objections, and permitted the judge of probate to read from a book of the probate court what purported to be the record of the letters of administration and testamentary to said Beall, and which he stated was a true copy of the letters, and which was read to the jury as evidence. To which decision and action of the court, and the reading of the said record, as evidence to the jury, the defendants, by their counsel, did then and there except, and now pray that this their bill of exceptions be signed and sealed by the court, which is done accordingly.

J. G. PALEN, *C. J., &c.* [SEAL.]

On which said bill of exceptions is the following endorsement, to wit:

Wm. W. Griffin, ad'r, &c., vs. George T. Beall and others. Bill of exceptions. Filed in my office this 30th day of July, 1870. Wm. Breeden, clerk.

201 District court, July term, 1870.

TERRITORY, FOR THE USE OF WILLIAM W. Griffin, ad'r of Charles S. Hinckley,
*vs.*
GEORGE T. BEALL AND OTHERS. } Debt.

Be it remembered, that on the trial of this cause, the jury returned into court, after they had retired to agree upon their verdict, and were, upon such return, asked by the court, through its interpreter, if they had agreed upon a verdict, to which they replied in the affirmative. The jury then presented to the court their verdict, which verdict was in the words and figures following, to wit:

We, the jury, unanimously find for the plaintiff the sum demanded, with interest at 6 per cent.

Then the court stated that the verdict should be put in form, which was done accordingly, and then the court stated to the jury: Gentlemen, listen to your verdict, as the court has recorded it.

"You say you find for the plaintiff the sum demanded, and assess his damages at $48,000, and so you say all."

202 The jury replied in the affirmative, and the jury was discharged.

To which action and judgment of the court the defendants except, and pray this their bill of exceptions to be signed and sealed by the court, and made a part of the record in this cause, which is done accordingly.

J. G. PALEN, *C. J., &c.* [SEAL.]

On which said bill of exceptions is the following endorsement, to wit: William W. Griffin, ad'r of Charles S. Hinckley, vs. George T. Beall. Bill of exceptions. Filed in my office this 30th day of July, 1870. Wm. Breeden, clerk.

District court, July term, 1870.

TERRITORY, USE OF W. W. GRIFFIN, AD'R DE bonis non of Charles S. Hinckley,
*vs.*
203 GEORGE T. BEALL AND OTHERS.

Be it remembered, that in this case the defendants filed their motion to set aside the verdict of the jury, and grant a new trial, which said motion is in the words and figures following, to wit:

District court, July term, 1870.

TERRITORY, FOR THE USE OF WILLIAM W. Griffin, adm'r of Charles S. Hinckley,
*vs.*
GEORGE T. BEALL AND OTHERS. } Debt.

The defendants, by their counsel, move the court to set aside the verdict in this case rendered by the jury, and grant a new trial. Because:

1. The jury found against the law and the evidence in this case.
2. The court gave wrong and improper instructions to the jury upon its own motion.
3. The court gave wrong and improper instructions to the jury on the application of the plaintiff.

204 4. The court refused the application of the defendants to give right and proper instructions to the jury in behalf of the defendants.

5. The court permitted the counsel for the plaintiff, in his closing argument to the jury, to make improper statements and use improper arguments to influence the opinions, action, and verdict of the jury.

6. The court permitted improper amendments to be made on the part of the plaintiff, while the jury were trying the case.

7. The court refused to grant the defendants a continuance of this cause.

8. The court refused to grant the defendants time sufficient to prepare the papers for a change of venue.

8[1]. The court permitted improper testimony to be given to the jury on the part of the plaintiff.

9. The court permitted papers and written testimony to be given in evidence to the jury by the plaintiff, when no copies of the said
205 papers and writings had been filed by the plaintiff, nor any sufficient reasons given by the plaintiff why such papers and writings had not been filed, or the copies of the same.

10. The court permitted the plaintiff to have read as evidence to the jury the records of the probate court, in the place of original papers and documents, without requiring the plaintiff to file either the originals or copies, or any copy of the records read to the jury.

11. The court did not commit into the hands of the jury, upon their retirement to agree upon a verdict, any of the papers, documents, writings, or records introduced in evidence in this case, and the jury retired without any of said written evidence in their hands or possession, and formed their verdict without any of the said evidence being present with them.

12. The jury returned into court, and upon being asked by the court through its interpreter if they had agreed upon a verdict, replied they had, and which verdict was then handed by the jury to the interpreter and read, and was, that they found in favor of the plaintiff what
206 he claimed without mentioning any sum or damages. The court then, while the jury were detained standing before the court, caused to be stated to the jury a verdict, in which damages in the sum of forty-eight thousand dollars were stated to the jury, and the court then asked the jury if they found damages in that sum, and the jury, without consulting together, answered the court in the affirmative, and were then discharged by the court, and the court then, upon said verdict, rendered the judgment now on record in this case.

13. The damages stated by the court to the jury, and by the court received of the jury as their verdict, are excessive.

14. The defendants have discovered, since the trial, new and important evidence, which *which* was unknown to them when the trial was had.

15. And for the reasons and causes to be found and apparent upon the face of the record in this case.

BENEDICT, CLEVER AND TOMPKINS,
*Attorneys for Def't's.*

On which said motion is the following endorsement, to wit:

207 The Territory, for the use, &c., vs. George T. Beall et als. Filed in open court this 26th day of July, 1870. Wm. Breeden, clerk.

Defendants then filed their motion in arrest of judgment, which said motion is in the words and figures following, to wit:

THE TERRITORY OF NEW MEXICO, USE OF W. W. Griffin, adm'r, estate of C. S. Hinckley, dec'd,
*vs.*
GEORGE T. BEALL AND OTHERS.

The defendants, by their attorneys, move the court to arrest the judgment in said cause, for the reason that the court erred in permitting the plaintiff to amend his petition, while there was a plea in abatement on file in said cause undisposed of, and that the court erred in proceeding with said cause without a trial upon said plea in abatement, and because the court erred in overruling the demurrer to the amended petition in said cause, and for other good and sufficient reasons apparent on the face of the record in said cause.

BENEDICT, CLEVER AND TOMPKINS,
*Attorneys for Defendants.*

208 On which said motion is the following endorsement, to wit: The Territory, use, &c., vs. George T. Beall et als. Motion in arrest of judgment. Filed in open court this 26th day of July, 1870. Wm. Breeden, clerk.

Which said motion the court also overruled. To the action of the court at the overruling the several said motions, the defendants, by their counsel, did then and there except, and now pray that this their bill of exceptions be now signed and sealed by the court, which is done accordingly.

J. G. PALEN, *C. J., &c.* [SEAL.]

On which said bill of exceptions is the following endorsement, to wit: Wm. W. Griffin vs. George T. Beall and others. Exceptions. Motion for new trial and arrest of judgment. Filed in open court this 30th day of July, 1870. Wm. Breeden, clerk.

209 District court, July term, 1870.

TERRITORY, FOR THE USE OF WILLIAM W. Griffin, ad'r of Charles S. Hinckley,
*vs.*
GEORGE T. BEALL AND OTHERS.

Be it remembered that on the trial of this cause, the defendants produced Samuel Ellison, who was sworn, and proposed to ask him whether he knew or not how long it takes to settle up a large commercial partnership, to which the plaintiff objected, and the court sustained the objection and refused the question to be asked.

The defendants produced Pablo Delgado, who was sworn, and proposed to ask him what was the difference in this country between a stock of goods in January, 1867, and January, 1869, to which the plaintiff objected, and refused to let the question be asked.

To all which rulings, decisions, and *and* action of the court the defendants by their counsel did then and there except, and now pray that this

their bill of exceptions be now signed and sealed by the court, which is done accordingly.

J. G. PALEN, *C. J., &c.* [SEAL.]

210 On which said bill of exceptions is the following endorsement, to wit:

Wm. W. Griffin vs. George T. Beall and others. Bill of exceptions. Filed in my office this 30th day of July, 1870. Wm. Breeden, clerk.

District court, July term, 1870.

THE TERRITORY, FOR THE USE OF W. W. GRIFFIN, ad'r de bonis non of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL AND OTHERS.

Be it remembered that on the trial of this cause, the following written and parole testimony was given to the jury:

Antonio Ortiz y Salazar was sworn, and testified that, in the year 1866, he was and still is the probate judge of Santa Fé County; that he knew George T. Beall, appointed him administrator of Charles S. Hinckley by virtue of his being named in Hinckley's will with
211 a Mr. Latham, one of the executors of the will; then read that portion of the will appointing George T. Beall and Latham executors; and witness further testifies that he knew Hinckley was dead; witness produced books of the probate court, read from the probate record letters of administration to Beall, and his oath as administrator. The said letters are in words and figures as follows:

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Por cuanto ha sido presentado ante el Honorable Antonio Ortiz y Salazar, juez de pruebas en y por el condado de Santa Fé en el Territorio de Nuevo Mejico, la ultima disposicion testamentaria del finado C. S. Hinckley la cual fue declarada por dicho juez como el testamento y ultima voluntad de dicho finado que murio en este ciudad de Santa Fé el dia 20 de Octubre de 1866, dijando propiedades raises, muebles, effectos, dineros, y creditas en dicho Territorio.

Y por cuanto George T. Beall ha peticionado para obtener letras de administracion de los bienes de dicho finado y ha dado las correspondientas fianzas y prestado el debido juramento de conformidad con la ley, para su fiel cumplimiento de sus deberes como tal
212 administrador y ejecutor de la ultima voluntad de dicho finado.

Por lo tanto, el Honorable Antonio Ortiz y Salazar, juez de pruebas en y por el condado de Santa Fé en el Territorio de Nuevo Mejico, ha nombrado, y por estas presentes nombra y declara al dicho George T. Beall, residente del condado de Santa Fé en dicho Territorio administrador y ejecutor legal de todos los bienes propriedades, muebles, efectos, dineros y creditos, que erah al tiempo de su muerte del finado C. S. Hinckley en este Territorio de conformidad con la ultima disposicion testamentaria de dicho finado.

Entendido que el dicho administrador debera dar cuenta de su administracion a la corte de pruebas, cada un año hasta la conclusion de su administracion y hara todos las demas cosas relativas a la dicha admi-

nistracion como requerido por la ley ó por orden de la corte de pruebas de dicho condado, ó cualesquiera otra corte teniendo jurisdiccion en el asunto.

En testimonio de lo cual pongo mi nombre y el sello de la corte de pruebas de dicho condado en Santa Fé de N. M. hoy el dia dos de Noviembre, A. D. 1866.

213 [SEAL.]

MIGUEL E. PINO,
*Es'co de la Corte de Pruebas.*

Of which said letters the following is a correct translation, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Whereas there has been presented to the honorable Antonio Ortiz y Salazar, judge of probate in and for the county of Santa Fé, in the Territory of New Mexico, the last will and testament of the deceased C. S. Hinckley, which has been established by the said judge as the last will and testament of said deceased, who died in this city of Santa Fé the 29th day of October, 1866, leaving real and personal estate, effects, moneys, and credits in said Territory;

And whereas George T. Beall has applied to obtain letters of administration upon the estate of the said deceased, and has given the proper bond, and taken the required oath, in conformity to law, for the faithful performance of his duties as such administrator and executor of the last will of the said deceased:

214 Therefore the Honorable Antonio Ortiz y Salazar, probate judge in and for the county of Santa Fé, in the Territory of New Mexico, has appointed, and by these presents appoints and confirms, the said George T. Beall, a resident of the county of Santa Fé, in said Territory, administrator and executor, legal, of all the real and personal estate, property, effects, moneys, and credits, that at the time of his death belonged to the deceased C. S. Hinckley in this Territory, in accordance with the last will of the said deceased.

It being understood that the said administrator shall render account of his administration to the probate court annually until the conclusion of his administration, and shall do all other things relating to said administration as required by law or by order of the probate court of said county, or any other court having jurisdiction in the premises.

In testimony whereof, I place my name and the seal of the probate court of said county at Santa Fé, N. M., this second day of November, A. D. 1866.

MIGUEL E. PINO,
*Clk of the Probate Court.*

215 TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Personalmente se presento ante me, Miguel E. Pino, escribano de la corte de pruebas del condado de Santa Fé en dicho Territorio, George T. Beall, y bajo de su juramento, declaro que el administrara bien y fielmente las bienes del finado C. S. Hinckley que hara un inventario exacto y completo de todas las bienes y propiedades de la masa de dicho finado, y que dara cuenta, pagara, y entregara todos los dineros, bienes y propiedades, de la dicha masa, a los herederos legales de dicho finado, y que ejecutara la ultima voluntad testamentaria de dicho finado y que hara todos los demas cosas relativas a la dicha administracion, como

requerido por la ley ó por orden de esta corte, ó cualesquiera otra corte teniendo jurisdiction en el asunto, con debida diligencia. Asi Dios me ayuda.

GEORGE T. BEALL.

Juramentado y suscrito ante me hoy el dia 2 de Noviembre, A. D. 1866.

MIGUEL E. PINO,
*Es'co de la Corte de Pruebas.*

Of which said affidavit the following is a correct translation, viz:

216 TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Personally appeared before me, Miguel E. Pino, clerk of the probate court of the county of Santa Fé, in said Territory, George T. Beall, and, upon his oath, declares that he will well and faithfully administer upon the effects of the deceased C. S. Hinckley; that he will make an exact and complete inventory of all the effects and property of the estate of said deceased, and that he will account for, pay, and deliver over all the moneys, effects, and property of the said estate to the legal heirs of said deceased, and that he will execute the last will of the said deceased, and that he will do all other things relative to said administration as required by law, or by order of this court, or any other court having jurisdiction in the premises, with due diligence: So help me God.

GEORGE T. BEALL.

Sworn to and subscribed before me this 2d day of November, A. D. 1866.

MIGUEL E. PINO,
*C'lk of the Probate Court.*

217 The bond of Beall as administrator was offered by plaintiff, and objected to by defendants, upon the ground that it varied from the copy filed in the cause by the plaintiff, in this, that the copy read Charles S. Hinckley, and the original C. S. Hinckley. The court gave permission to plaintiff to amend the copy, and overruled the objection, to which the defendants excepted. The original was then read to the jury from the probate record, and which bond is as follows, to wit:

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Sepan todos, por estes presentes como yo George T. Beall como principal y Sigmund Seligman, Emanuel Spiegelberg, Abraham Staab, Miguel E. Pino, y José Manuel Gallegos como fiadores, somos tenidos y firmemente obligados asi al Territorio de Nuevo Mejico en la suma de ciento veinte mil pesos, ($120,000 00,) al pago de la cual, nos obligamos bien y fielmente, juntos y separademente tanto por nosotros mismos, como por nuestros herederos, ejecutores ó administradores. En
218 fe de lo cual ponemos nuestros nombres y sellos en Santa Fé de Nuevo Mejico, este dia dos de Noviembre del año del señor de mil ocho cientos sesenta y seis.

La condicion de la arriba obligacion es tal, que por cuanto el dicho principal George T. Beall ha sido nombrado este dia por el juez de pruebas de dicho condado administrador y ejecutor de los bienes del finado C. S. Hinckley segun la ultima disposicion testamentaria de dicho finado: Ahora si el dicho ejecutor y administrador, da cuenta, paga y entreza todos los dineros y bienes de la dicha masa, a los herederos

legales, de dicho finado, y ejecuta la ultima voluntad testamentaria de dicho finado, y hace todas los demas cosas relativas a la dicha administracion, como requerido por la ley ó por orden de la corte de pruebas del condado de Santa Fé ó cualquiera otra corte teniendo jurisdiccion en el asunto, entonces y en tal caso esta fianza sera nula y de ningun valor, de lo contrario quedara en toda su fuerza y efecto.

GEORGE T. BEALL. [SELLO.]
A. STAAB. [SELLO.]
E. SPIEGELBERG. [SELLO.]
S. SELIGMAN. [SELLO.]
219 MIGUEL E. PINO. [SELLO.]
J. M. GALLEGOS. [SELLO.]

[Rev. stamp, one dollar.]

Of which said bond the following is a correct translation, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Know all men by these presents, that I, George T. Beall, as principal, and Sigmund Seligman, Emanuel Spiegelberg, Abraham Staab, Miguel E. Pino, and José Manuel Gallegos as securities, are held and firmly bound unto the Territory of New Mexico, in the sum of one hundred and twenty thousand dollars ($120,000 00,) for the payment of which, we, well and faithfully, jointly and separately, bind ourselves, and also our heirs, executors, and administrators. In witness whereof, we place our names and seals, at Santa Fé, New Mexico, this second day of November, in the year of our Lord one thousand eight hundred and sixty-six.

The condition of the above is such, that whereas the said
220 principal, George T. Beall, has this day been appointed by the probate judge of said county administrator and executor of the estate of C. S. Hinckley, deceased; now if the said executor and administrator shall account for, pay, and turn over all the moneys and property of the said estate to the legal heirs of the said deceased, and shall execute the last testamentary will of the said deceased, and shall do all other things relative to the said administration as required by law, or by the order of the probate court of the county of Santa Fé, or any other court having jurisdiction in the matter, then and in such case this bond shall be null and of no effect; otherwise it shall remain in full force and effect.

GEORGE T. BEALL. [SEAL.]
A. STAAB. [SEAL.]
E. SPIEGELBERG. [SEAL.]
S. SELIGMAN. [SEAL.]
MIGUEL E. PINO. [SEAL.]
J. M. GALLEGOS. [SEAL.]

[Rev. stamp, one dollar.]

When the aforesaid letters of administration were offered by plaintiff to be read, the defendants objected upon the ground that no copy
221 of the same was filed in the cause, nor the original, but the court overruled the objection on the ground that the original was proven in the possession of Beall, and the letters were read to the jury, to which action of the court and the reading of the letters the defendants excepted. The plaintiff offered to read in evidence a copy of the original inventory, made by said administrator to the probate court, to the reading of which defendants objected, upon the ground that the plaintiff should

produce the original itself. The plaintiff then proved by said judge of probate and his son, a deputy probate clerk, that they had searched for the same, and it was lost or mislaid.

Louis Tafoya being sworn on the part of the plaintiff, testified that he was deputy probate clerk of Santa Fé County, and that the inventory recorded in the books of his office, of which the one on file was a copy, was recorded by him in the presence of his father, Antonio Ortiz y Salazar, then probate judge, and was in all respects a true copy of the original, for which he had searched and could not find it.

Antonio Ortiz y Salazar testified that the inventory recorded
222 in the books of the probate court, and offered in evidence, was a true copy of the original which was given him by Beall, and that he supposed the original was in possession of Beall, as it was the custom in the office of the probate court to record all such papers, and all papers pertaining to administration, and return the originals to the owner.

Witness further testified that Beall resigned; that he only made two reports, which are the ones on file; the one dated 27th July, 1869, was his final report. A copy was then read to the jury, as follows, to wit:

*Inventory containing the property of the late Charles S. Hinckley, commenced and made this tenth day of January*, 1867.

The property rights and credits of the said deceased, Charles S. Hinckley, so far as the undersigned executor has been able to obtain a knowledge thereof, were, at the time of his decease, as follows:

The firm or partnership of which he was a member with Charles H. Blake and W. V. B. Wardwell, at Fort Craig and other places in this Territory, were owing and due the said deceased the sum of forty-
223 six thousand five hundred and thirty-eight dollars and sixty cents.

The undersigned being satisfied that the sum stated is correct, has agreed to receive of the said Charles H. Blake and W. V. B. Wardwell, in full discharge of the capital and profits of the said deceased, the aforesaid sum. The said Blake and Wardwell have agreed to pay the said sum as soon as they can arrange their affairs to do so and within a reasonable time.

The undersigned is satisfied that the said arrangement is the best he could make for the interest of the estate, and that the payment will be made in due time.

The undersigned states that the said deceased departed this life owning nine hundred and seventeen shares in the Bay State Pinos Altos Mining Campany, which are of the value of from three to five dollars per share, more or less. Also Asa B. Carey was indebted to him in the sum of fifteen hundred dollars, by virtue of the note conditioned to be paid when it should be convenient for the said Asa B. Carey to pay the same; also a note drawn by Asa B. Carey in favor of Charles S. Hinckley or order for the sum of four hundred and sixty-nine
224 dollars and thirty-four cents; also a note drawn by Wardwell & Watts, June 1st, 1866, in favor of George T. Beall, for the sum of four thousand eight hundred and seventy-seven dollars and twenty-four cents, with interest from date, at 12 per cent. per annum, said note being the property of Charles S. Hinckley and Charles H. Blake; therefore half of the amount of the note belongs to the estate of the late Charles S. Hinckley.

He also left the following goods and chattels, to wit: One bedstead, two wool mattrasses, two pictures, two chairs, one book-case and books,

and wardrobe, one washstand, one wash-basin and pitcher, two pairs blankets, one carpet, two tables, and one table-cover; the value of the said articles are not given, for, by the last will and testament of the deceased, were specially bequeathed to persons therein mentioned, and are in the hands of the undersigned to be delivered to the persons having a right to the same.

The undersigned has not received into his hands any moneys belonging to the said estate, nor does he expect to receive any until payment shall be made by the said Wardwell & Blake, Asa B. Carey, and Wardwell and Watts, or sale to be made of the aforementioned
225 mining shares.

The deceased also left one undivided twelfth interest in the Cañon del Agua and San Pedro grants, which has been bequeathed in the said will and testament; the value of the said interest the undersigned is unable to state.

He is also unable to state the amount due by the deceased at the time of his death, and which is to be paid out of said estate; but from the best of his information and belief, the amount of said debts and bequests made in the will, the last illness and funeral expenses, and those of settling the estate, will considerably exceed the whole value of said estate; while he is satisfied that the entire legacies cannot be paid as specified in the will, there will be a large surplus exceeding all the debts, costs, and charges.

GEORGE T. BEALL,
*Executor.*

This inventory was terminated this 10th day of January, 1867, signed at Santa Fé, New Mexico, by George T. Beall, executor.

Plaintiff then offered to read in evidence letters of administra-
226 tion de bonis non to the said Griffin, to which the defendants objected; the court overruled the objection, and the letters were then read to the jury, to which the defendants excepted, and the said letters are as follows, to wit:

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Por cuanto S. B. Elkins, administrador de los bienes del finado Charles S. Hinckley, ha hecho su resignation como tal administrador, (y ha sido acceptada por la corte de pruebas de dicho condado,) sin haber administrado todos los bienes de dicho finado, y por cuanto W. W. Griffin ha presentado una peticion pidiendo ser nombrado administrador de bonis non de dicho estado, habiendo sido recomendado por el administrador cesante, y algunos heredores de dicho finado, y por cuanto ha prestado el debido juramento y dado los correspondientes fianzas para el fiel cumplimiento de sus deberes, como tal administrador, por lo tanto, el Honorable Antonio Ortiz y Salazar, juez de proebas en y por el condado de Santa Fé en el Territorio de Nuevo Mejico, ha nombrado y por
227 estas presentes nombra y declara al referido W. W. Griffin, residente del condado y Territorio arriba dichos, administrador de bonis non de todos y cada uno de los bienes, dineros, creditas, propiedades y pertenencias del estado del finado Charles S. Hinckley, que no estan aun administrados, que eran de dicho finado al tiempo de su muerto. Entendido, que el dicho administrador debe dar cuenta de ellos a esta corte, cada un año hasta la conclusion de su administracion como

requeri do por la ley ó por orden de esta corte ó cualesquiera otra corte teniendo jurisdiccion en el asunto.

En testimonio de lo cual pongo mi nombre y el sello de la corte de pruebas de dicho condado en Santa Fé, N. M., hoy el dia 30 de Octubre, A. D. 1869.

[SEAL.] TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*

Of which said letters of administration the following is a correct translation, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

Whereas S. B. Elkins, administrator of the estate of the de-
228 ceased Charles S. Hinckley, has resigned as such administrator (and has been accepted by the probate court of said county) without having administered upon all the effects of said deceased; and whereas W. W. Griffin has presented a petition asking to be appointed administrator de bonis non of said estate, and being recommended by the retiring administrator and some of the heirs of the said deceased; and whereas he has taken the required oath and given the proper bonds for the faithful performance of his duties as such administrator:

Therefore, the honorable Antonio Ortiz y Salazar, probate judge in and for the county of Santa Fé, in the Territory of New Mexico, has appointed, and by these presents appoints and confirms, the aforesaid W. W. Griffin, a resident of the county and Territory aforesaid, administrator de bonis non of all and every one of the goods, moneys, credits, properties, and appurtenances of the estate of the deceased Charles S. Hinckley that are not already settled, and that belonged to said deceased at the time of his death, it being understood that the said administrator shall render account of them to this court each year,
229 until the close of his administration, as required by law or by order of this court, or any other court having jurisdiction in the matter.

In testimony whereof I place my name and the seal of the probate court of said county at Santa Fé, this 30th day of October, A. D. 1869.

TRINIDAD ALARID,
*Clerk of the Probate Court.*

The plaintiff then read to the jury the report of said Beall to the probate court, dated the 1st day of May, 1868; which said report is as follows, to wit:

*George T. Beall in account with the estate of the late Charles S. Hinckley.*

| 1867. | | | | | | DR. | |
|---|---|---|---|---|---|---|---|
| M'ch | 1. | To am't | rec'd | from | Wardwell & Blake ..... | | 904 75 |
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| April | 2. | " | " | " | Col. N. H. Davis ..... | | 20 00 |
| " | 27. | " | " | " | Wardwell & Blake ..... | | 1,169 80 |
| May | 1. | " | " | " | Wardwell & Watts..... | | 300 00 |
| " | 17. | " | " | " | Wardwell & Blake ..... | | 879 57 |
| June | 18. | " | " | " | " " ..... | | 1,121 91 |
| July | 5. | " | " | " | Wardwell & Watts..... | | 250 00 |
| | | | | | | | $5,552 37 |

230 CR.

| | | | | | | |
|---|---|---|---|---|---|---|
| M'ch | 4. | By am't paid | | D'r J. C. McKee | 500 | 00 |
| " | 4. | " " " | | L. W. Kennon | 130 | 00 |
| " | 4. | " " " | | M. Coffman | 84 | 70 |
| " | 4. | " " " | | funeral expenses | 225 | 50 |
| " | 8. | " " " | | Staab & Bro | 216 | 89 |
| " | " | " " " | | Seligman & Bro | 23 | 85 |
| " | " | " " " | | R. H. Tompkins | 100 | 00 |
| " | 12. | " " " | | Elsberg & Amberg | 154 | 00 |
| April | 27. | " " " | | U. S. deputy collector for income tax | 1,169 | 80 |
| May | 20. | " " " | | J. Serafin Ramirez | 1,000 | 00 |
| June | 18. | " " " | | N. Hughes on note given in his favor by Hinckley & Blake for $2,000 | 1,000 | 00 |
| " | 18. | " " " | | interest on the above | 171 | 91 |
| Oct. | 17. | " " " | | note to Arthur Latham | 150 | 00 |
| Dec. | 4. | " " " | | " " " " | 354 | 25 |
| | | " " " | | George T. Beall, as administrator, on receiving the sum of $5,552$\frac{37}{100}$, at 2½ p'r c | 138 | 80 |
| | | " " " | | George T. Beall, as administrator, for disbursing the sum of $5,280$\frac{90}{100}$, at 2½ p'r c't | 132 | 02 |
| 1868. | | | | | | |
| May | 2. | " " " | | approved by the probate court, for special services | 110 | 00 |
| | | | | | $5,661 | 72 |

231 RECAPITULATION.

| | | |
|---|---|---|
| By amount received | $5,552 | 37 |
| " " disbursed | 5,661 | 72 |
| | 109 | 35 |
| 1868. | | |
| April 30 To amount due from Wardwell & Blake | $41,556 | 25 |
| " " " " Wardwell & Watts | 2,414 | 82 |
| " " " " Asa B. Carey | 1,969 | 34 |
| " 917 shares Bay State Pinos Altos Mining Company, present value not known, as there is no market for the same | | |
| | $45,940 | 41 |

I have the honor to state, for the information of the hon. probate court, that the household furniture mentioned in the inventory furnished January 10th, 1867, were disposed of according to the last will and testament of the late Charles S. Hinckley, and that no disposition has been made of the interest in the Cañon del Agua and San Pedro Grants, also mentioned in the inventory. I would also state that the amount due the estate of the late Charles S. Hinckley by W. V. B. Wardwell and Charles H. Blake, that they have promised to settle their indebt-

232 edness as soon as the old debts of the concern are paid, said debts having been contracted while the late Charles S. Hinckley was a partner of the concern.

All of which is respectfully submitted.

GEORGE T. BEALL,
*Administrator.*

SANTA FÉ, N. M., *May* 4, 1868.

TERRITORIO DE NUEVO MEJICO,
*Condado de Santa Fé:*

Yo el infrascrito, administrador y ejecutor de la ultima disposicion testamentaria del finado Charles S. Hinckley, juro solamenamente que el antecedente informe manifiesta la practica de mi administracion del estado de dicho finado, hasta esta fecha lo cual a sido hecho por me y manifestado segun mi mejor conocimiento.

GEORGE T. BEALL,
*Administrador.*

Juramentado y suscrito ante me hoy 4 de Mayo, de 1868.

TRINIDAD ALARID,
*Esc'bo de la Corte de P'bas.*

NOTA.—El antecedente informe ha sido aprovado por la hon. corte de pruebas, del condado de Santa Fé, vease los procedimientos de dicha corte del dia 4 de Mayo, A. D. 1868.

233 Of which said affidavit and note the following is a correct translation, to wit:

TERRITORY OF NEW MEXICO,
*County of Santa Fé:*

I, the undersigned, administrator and executor of the last will of the deceased Charles S. Hinckley, do solemnly swear that the foregoing report exhibits the results of my administration of the estate of the said deceased to this date, which has been made by me as shown, according to the best of my knowledge.

GEORGE T. BEALL,
*Administrator.*

Sworn to and subscribed before me this 4th day of May, 1868.

TRINIDAD ALARID,
*Cl'k of the Probate Court.*

NOTE.—The foregoing report has been approved by the hon. probate court of the county of Santa Fé. See the proceedings of said court of May 4th, 1868.

The plaintiff then read to the jury the report of said Beall, dated January 26th, 1869, which is as follows, to wit:

234 *George T. Beall in account with the estate of the late Charles S. Hinckley.*

1868. DR.

| | | | |
|---|---|---|---|
| | | To am't bro't forward from last statement rendered May 4, 1868, and approved by the probate court. | 5,552 37 |
| May | 20 | " amount received from Wardwell & Blake..... | 135 60 |

| | | | |
|---|---|---|---|
| Aug. 6 | " " " " | Asa B. Carey | 469 34 |
| " 24 | " " " " | Wardwell & Watts | 332 40 |
| Nov. 29 | " " " " | W. H. Bell; this amount was not mentioned in the inventory rendered to the probate court January 10, 1867 | 200 00 |
| | | | $6,689 71 |

1868. CR.

| | | |
|---|---|---|
| | By amount bro't forward from last statement rendered May 4, 1868, and approved by the probate court | 5,661 72 |
| May 20 | " am't paid Geo. T. Beall due from last statement rendered May 4, 1868 | 109 35 |
| " " | " am't paid clerk probate court | 15 00 |
| " " | " " " " " " " | 10 00 |
| Aug. 6 | " " " Arthur Latham on note | 445 88 |
| " 24 | " " " " " " " | 315 80 |
| | | $6,557 75 |

RECAPITULATION.

| | | |
|---|---|---|
| To amount received | | $6,689 76 |
| " " disbursed | | 6,557 75 |
| 235 To amount due from Geo. T. Beall | | 131 91 |
| To am't due from Wardwell & Blake | | $41,420 65 |
| " " " " Wardwell & Watts | | 2,227 40 |
| " " " " Asa B. Carey | | 1,500 00 |
| " 917 shares Bay State Pinos Altos Mining Company, present value not known as there is no market for the same | | |
| | | $45,148 05 |

I certify that the foregoing is a true and accurate statement of all moneys received and disbursed by me as administrator to the estate of the late Charles S. Hinckley, deceased, from May 4, 1868, to January 26th, 1869.

Respectfully submitted.

GEORGE T. BEALL,
*Administrator.*

SANTA FÉ, NEW MEXICO, *January 26th*, 1869.

Sworn to and subscribed before me this 26th day of January, A. D. 1869.

TRINIDAD ALARID,
*Probate Clerk.*

NOTA.—El antecedente informe fue aprobado por la corte de
236 pruebas, segun consta en los procedimientos de dicha corte del dia 27th de Enero, A. D. 1869.

Of which note the following is a correct translation, to wit:

NOTE.—The foregoing report was approved by the probate court, as appears in the proceedings of said court of the 27th day of January, A. D. 1869.

The plaintiff then gave in evidence the record of the probate court, showing the action of the said court when the said report was made, which said records are as follows, to wit:

*Sesion regular de la corte de pruebas del condado de Santa Fé en el Territorio de Nuevo Mejico, en su termino regular de Mayo, A. D.* 1868.

LUNES, *Mayo* 4, *A. D.* 1868.

La corte, presentes los oficiales de la misma, se reunio en este dia, de conformidad con la ley, y fue proclamada abierta.

Ahora se presente Geo. T. Beall, y presente su informe annal como ejecutor de la ultima disposicion testamentaria del finado Charles S. Hinckley, y administrador de dichos bienes, el cual, despues de
237 haber sido bien examinado por la corte, fue aprobado por la misma, y el escribano fue instruido de enregistrar dicho informe y sus comprobantes en el libro respectivo tenido con tal fin, y despues de enregistrado, devolver el original al administrador.

(Firmado) ANTONIO ORTIZ Y SALAZAR,
*Juez de Pruebas.*

(Firmado) TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*

Of which said proceedings the following is a correct translation, to wit:

*Regular session of the probate court of the county of Santa Fé, in the Territory of New Mexico, at the regular May term, A. D.* 1868.

MONDAY, *May* 4, A. D. 1868.

The court, the officers of the same being present, convened this day in conformity to law, and was announced open.

Now appeared George T. Beall and presented an annual report, as executor of the last will of the deceased Charles S. Hinckley, and administrator of the said property, which, after having been well examined by the court, was approved by the same and the clerk was in-
238 structed to record said report and its vouchers in the respective book kept for that purpose, and after recording it to return the original to the administrator.

(Signed) ANTONIO ORTIZ Y SALAZAR,
*Probate Judge.*

(Signed) TRINIDAD ALARID,
*Clerk of the Probate Court.*

When the said reports were read, the certificates of their being sworn to were also read, and the action and orders of said court therein.

Plaintiff then introduced the record of a special term of said court, held on the 27th day of January, 1869, which shows the resignation of said Beall as administrator and the order of the court accepting the same, and the appointment of S. B. Elkins as administrator de bonis non

of the estate of said Hinckley, deceased, which said record is as follows, to wit:

*Sesion especial de la corte de pruebas en y por el condado de Santa Fé en el Territorio de Nuevo Mejico.*

MIERCOLES, *Enero* 27, A. D. 1869.

La corte se reunio en este dia, presentes los oficiales de la misma,
239 y fue proclamada abierta. Habiendore el dia veinte del que cursa prorogado todos los asuntos sobre testamentarias, hasta el proximo termino, regular, de este corte, el juez en sesion especial tomó accion sobre la resignacion, hecha y presentada por George T. Beall, como ejecutor y administrator del estado del finado Charles S. Hinckley, quien al mismo tiempo presento un informe de la practica por el dude su anterior informe como administrador de dicho estado, el cual fue examinado y aprobado por la corte.

La corte en vista de las razones expuestas en dicho resignacion, que el dicho Beall, siendo un oficial del ejercito de los E. U. y siendo llamado para Washington, y expresto a ser cambiado a otro lugar, lo cual le impide ejercer la administracion, acepta tal resignacion, quedando George T. Beall responsable in todas las restricciones de la ley, por lo que existe y tiene el como administrador del estado del finado C. S. Hinckley, pertenéciente a la dicha administracion, hasta entregarle a su sucessor, y en seguida el senor cum testamento annexo del estado del finado Charles S. Hinckley, de todo lo que no esta administrado,
240 teniendo antes el dicho administrador que performar todo lo requerido por la ley en el asunto.

Entonces la corte se prorogo sine die.

(Firmado) ANTONIO ORTIZ Y SALAZAR,
*Juez de Pruebas.*

(Firmado) TRINIDAD ALARID,
*Escribano de la Corte de Pruebas.*

Of which said proceedings the following is a correct translation, to wit:

*Special session of the probate court of the county of Santa Fé, Territory of New Mexico.*

WEDNESDAY, *January* 27, A. D. 1869.

The court convened this day, the officers of the same being present, and was declared open.

Having on the twentieth instant adjourned all business upon wills to the next regular term of this court, the judge, at a special session, took action upon the resignation made and presented by George T. Beall as executor and administrator of the estate of the deceased, Charles S. Hinckley, who, at the same time, presented a report of his action
241 since his former report as administrator of said estate, which was examined and approved by the court.

The court, in view of the reasons expressed in said resignation, that the said Beall, being an officer of the U. S., and being ordered to Washington and expecting to be transferred to another place, which would prevent his exercising the administration, accepts such resignation, holding the said George T. Beall responsible under all the requirements of the law, for that which he has done as administrator of the estate of

the deceased C. S. Hinckley, pertaining to said administration, until he has turned over to his successor, and instructed that gentleman, cum testamento annexo of the estate of the deceased Charles S. Hinckley, of all that has not been administered upon, requiring the said administrator to perform everything required by the law in the premises.

The court then adjourned sine die.

(Signed) ANTONIO ORTIZ Y SALAZAR,
*Probate Judge.*

(Signed) TRINIDAD ALARID,
*Clerk of the Probate Court.*

242 Stephen B. Elkins, a witness for the plaintiff, being sworn, testified as follows: Early in 1868 Arthur Latham, one of the residuary legatees in the will, called on me in relation to the estate of Hinckley, and employed me as attorney for the heirs to take such action as I might deem proper. I called on Beall, who was administrator of the estate, about the estate, and asked him if he had collected the $46,538 item or any part of the same; had frequent conversations with Beall; continued until February, 1870. He stated that Wardwell and Blake had paid him about $5,000. Asked him why he had not taken some security; I told him I thought it was not safe; asked him if he had any note for the amount; he said he had not; all he had was in the inventory; when he sold the property he supposed they would pay for it; he thought the sum was the fair value of the interest of the estate. Beall commenced no suit; all this occurred before I was appointed administrator; after my appointment Beall delivered to me the paper, (produced,) purporting to be an abstract from the books of Hinck-
243 ley, Blake and Wardwell, showing the condition of the account of Hinckley with the firm, and said it was a true statement.

The paper was read to the jury, and is in the words and figures following, to wit:

*C. S. Hinckley in ac. with Hinckley, Blake and Wardwell.*

| 1865. | | | | Dr. | Cr. |
|---|---|---|---|---|---|
| Oct. | 3. | To | cash | 833 54 | |
| " | 13. | " | m'd'se | 7 00 | |
| Dec. | 20. | " | cash | 5,246 78 | |
| " | " | " | " | 660 09 | |
| 1866. | | | | | |
| Jan. | 12. | " | m'd'se | 102 75 | |
| Feb. | 26. | " | cash | 420 00 | |
| Ap'l. | 24. | " | m'd'se | 63 50 | |
| " | " | " | sund's | 1,020 28 | |
| May | 14. | " | Shedd, Blake & Co | 2,000 00 | |
| " | " | " | cash | 1,548 83 | |
| June | 5. | " | " | 349 56 | |
| " | 16. | " | " | 500 00 | |
| " | " | " | " | 500 00 | |
| " | 29. | " | m'd'se | 109 32 | |
| " | 30. | " | " | 101 65 | |
| July | 2. | " | " | 3 00 | |
| " | 4. | " | " | 817 88 | |
| " | 11. | " | Shedd, Blake & Co | 716 33 | |
| " | " | " | cash | 5,000 00 | |

| | | | | | |
|---|---|---|---|---|---|
| " | 18. | " | " | 4 00 | |
| | " | 31. | " sundries | 138 80 | |
| 244 | August | 8. | To cash | 130 50 | |
| | " | 15. | " " | 2,299 20 | |
| " | " | " | sundries | 39 65 | |
| " | 22. | " | cash | 1,096 49 | |
| Oct. | 1. | " | sundries | 6,067 94 | |
| " | 13. | " | W. V. B. Wardwell | 1,138 91 | |
| " | 15. | " | cash | 6,606 05 | |
| " | 18. | " | m'd'se | 51 00 | |
| Nov. | 10. | " | C. H. Blake | 11,302 98 | |
| | Am't forward | | | 54,873 59 | |
| Nov. | 10. | " | m'd'se loss | 692 38 | |
| 1865. | | | | | |
| Sept. | 21. | By | capital stock | | 50,000 00 |
| Oct. | 10. | " | cash | | 9,000 00 |
| " | 26. | " | Lt. Col. Rigg | | 30 00 |
| 1866. | | | | | |
| Sept. | 25. | " | sundries | | 10,045 00 |
| " | 26. | " | I. R. Hunt | | 140 00 |
| May | 4. | " | cash | | 50 00 |
| " | 8. | " | " | | 100 00 |
| " | 24. | " | m'd'se | | 22 92 |
| June | 14. | " | C. H. Blake | | 3,392 16 |
| July | 11. | " | m'd'se | | 50 00 |
| " | 18. | " | sundries | | 5,000 00 |
| Aug. | 8. | " | personal property | | 1,000 00 |
| " | 18. | " | E. W. Bates | | 82 25 |
| Sept. | 3. | " | G. W. Blake | | 22 25 |
| " | 6. | " | sundries | | 540 00 |
| | Oct. | 13. | " personal property | | 609 81 |
| 245 | " | 31. | By sundries | | 10,512 92 |
| | Nov. | 8. | " W. H. Ayres | | 100 00 |
| " | 10. | " | Hinckley & Blake | | 4,500 00 |
| " | " | " | m'd'se | | 51 00 |
| " | " | " | C. H. Blake | | 3,084 16 |
| " | " | " | sundries, (profits) | | 3,772 12 |
| | | | | $55,565 97 | $102,104 59 |
| | Am't to bal. carried down | | | 46,538 62 | |
| | | | | $102,104 59 | $102,104 59 |
| Nov. | 10. | By | balance on books, Wardwell & Blake | | 46,538 62 |

TERRITORY OF NEW MEXICO,
*County of Socorro, ss:*

Personally appeared before me, John R. Hunt, a notary public for the county of Socorro, Territory of New Mexico, at Fort Craig, in the Territory and county aforesaid, W. V. B. Wardwell, of the late firm of Hinckley, Blake and Wardwell, who, being duly sworn according to law, deposes and says that the annexed statement of the account of Charles S. Hinckley, (deceased,) in account with the late firm of Hinck-

ley, Blake and Wardwell, is just and true, to the best of his knowledge and belief, and that it shows correctly the indebtedness of said
246 firm to the estate of the late Charles S. Hinckley.

(Signed) W. V. B. WARDWELL.

Sworn and subscribed before me this 7th day of December, A. D. 1866.

[SEAL.] (Signed) J. R. HUNT,
*Notary Public.*

When Beall turned over to me he delivered to me no indebtedness against Blake and Wardwell. I found only the inventory and reports. Immediately after my appointment as administrator I made a demand of Blake and Wardwell; they said they had no personal property. I had frequent conversations with Beal about that part of the inventory that relates to the sale to Blake and Wardwell, and stated to him that I thought he did not sufficiently secure the estate. He said he thought at the time they would pay, but they had deceived him; he still hoped they would pay. He seemed to regret their action, and to be astonished at it.

These conversations with Beall continued up to February, 1870. I stated to Beall that Blake and Wardwell wanted to charge for depreciation of stock and bad debts. He said they could not be admit-
247 ted; that they owed the sum stated in the inventory less the payment. I told Beall that I had heard Blake had sold out to Wardwell and left the Territory. He said his action was strange and unexpected, and without his knowledge. He said in different conversations that they had paid him on this indebtedness once $5,000, the sum stated in the return, and that was all they had paid him.

Upon his cross-examination by the defendants' counsel, the witness testified as follows:

The $5,000 has been applied to the payment of the debts of the estate; same $5,000 credited in returns. I did not bring any suit against Blake and Wardwell; had no contract with them. I have been attorney for Mr. Griffin; have no suit against them for this claim.

The witness, on being asked by defendants' counsel if Beall had ever told him that he had sold Hinckley's interest to Blake and Wardwell, answered, I don't recollect that he ever told me so; I inferred so from Beall's conversations, who treated it as a sale.

Defendants called Samuel Ellison, who was sworn, and the
248 defendants proposed to the court to ask this witness the following questions: Do you know or not how long it usually takes in this country for surviving partners to wind up and settle a large commercial business?

To the asking of this question the plaintiff objected, and the objection was sustained by the court, and the defendants excepted.

Mr. Ellison then testified that the distance from Santa Fé to Fort Craig was from about one hundred and eighty to two hundred miles.

Pablo Delgado was then sworn, and asked by defendants what was the difference, if he knew, of the price of a stock of goods in this country between January, 1867, and January, 1869? The plaintiffs objected to this question, and the court sustained the objection, when the defendants excepted to the ruling of the court.

The foregoing was all the material evidence and proofs given on the trial of this cause, and because neither the said evidence and proofs, or the objections and exceptions taken thereto appear upon the record, the defendants, by their counsel, pray that the same may be signed

249 and sealed and made a part of the record in this cause; which is allowed to them.

J. G. PALEN, *C. J., &c.* [SEAL.]

On which said bill of exceptions is the following endorsement, to wit:

The Territory, for use, &c., vs. George T. Beall et als. Bill of exceptions, containing evidence. Filed in my office this 30th day of July, 1870. Wm. Breeden, clerk.

UNITED STATES OF AMERICA,
*Territory of New Mexico:*

I, William Breeden, clerk of the United States district court for the first judicial district of the Territory of New Mexico, do hereby certify that the foregoing one hundred and eighty-seven pages contain a full, true, and correct transcript of all the papers in the above-entitled cause as appear of record in my office.

250 In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Santa Fé, N. M., this 21st day of December, A. D. 1870.

[SEAL.] WM. BREEDEN,
*Clerk.*

And be it further remembered that afterwards, to wit, on the 21st day of December, 1870, the following assignment of errors was filed in the office of the clerk of the said supreme court, which is in the words and figures following, to wit:

In the supreme court for the Territory of New Mexico, at the January term thereof, A. D. 1871.

GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ Manuel Gallegos, Sigmund Seligman, and Emanuel Spiegelberg,
*vs.*
THE TERRITORY OF NEW MEXICO, FOR THE use of W. W. Griffin, adm'r de bonis non of the estate of Charles S. Hinckley, deceased.
} Appeal.

251 The said plaintiffs in error assign for error in the above-entitled cause in the court below the following causes, to wit:

1. The court below erred in overruling the demurrer filed to the petition of said Territory in said cause by the said now plaintiffs.

2. The court below erred in permitting the plaintiff below to amend her petition by striking out of the same the name of Luz Ortiz de Pino, one of the defendants, whilst a plea in abatement to said petition was still pending undecided.

3. The court below erred in permitting the plaintiff to proceed with said cause without a trial or judgment upon said in abatement.

4. The court below erred in not granting to said plaintiffs, then defendants, at the July term of the district court, 1870, a continuance of said cause.

5. The court below erred in refusing to defendants in said
252 court, after the application for a continuance had been refused, sufficient time to prepare an application for a change of venue in said cause.

6. The court below erred in admitting the copy of letters of administration granted to George T. Beall, to be read as evidence in said cause, and in admitting the bond of said Beall and others, to be read as evidence.

7. The court below erred in permitting Stephen B. Elkins, the attorney for the then plaintiff, and a former administrator de bonis non upon the estate of C. S. Hinckley, deceased, to testify as a witness on the part of said plaintiff.

8. The court below erred in refusing to permit defendants in said court to prove by Samuel Ellison the length of time necessary to settle up the busines of a large commercial concern, and by Pablo Delgado the depreciation of goods between the periods of January, 1867, and January, 1869.

253 9. The court below erred in giving the instructions on the part of the plaintiff in said court, which it gave to the jury, and in refusing to give to the jury the instructions asked for on the part of defendants in said court.

10. The court below erred in receiving and recording the informal verdict of the jury, and in rendering judgment thereon.

11. The court below erred in rendering judgment on such an informal verdict as it did render in this cause.

12. The court below erred in refusing to grant to said defendants a new trial in said cause.

13. The court below erred in refusing to arrest the judgment in said cause.

BENEDICT, CLEVER & TOMPKINS,
*For Plaintiffs in Error.*

And upon which is endorsed the following joinder-in-error, to wit:

254 The defendants in error and appellees say there is no error in the record.

S. B. ELKINS,
*Att'y for Def'ts in Error.*

JAN'Y 3, 1871.

Which said paper is endorsed as follows, to wit:

Geo. T. Beall et al., vs. The Territory of New Mexico, use, &c., assignment of errors.

Filed in my office this 31st day of December, 1870.

WM. BREEDEN,
*Clerk Supreme Court.*

Joinder in error filed January 3, 1871.

WM. BREEDEN,
*Clerk.*

And afterwards, to wit, on the 4th day of January, A. D. 1871, being the third day of the January, A. D. 1871, term of the said supreme court, the following proceedings were had, to wit:

Appeal, Santa Fé Co., 1st district, C. J. Palen.

255 THE TERRITORY, FOR THE USE OF W. W. Griffin, administrator de bonis non,
*vs.*
GEORGE T. BEALL ET ALS., APPELLANTS.

This cause is set down for argument on Thursday of next week.

And afterwards, to wit, on the 12th day of January, A. D. 1871, being the 10th day of said term of said court, the following proceedings were had, to wit:

Appeal, Santa Fé County, 1st district.

THE TERRITORY, FOR THE USE OF W. W. GRIFFIN, administrator de bonis non,
*vs.*
GEORGE T. BEALL ET ALS.

This cause now came on to be heard and was now argued by R. H. Tompkins, esq., of counsel for the appellants, and there not being time to conclude the argument of this cause on this day, the same is continued until to-morrow.

And afterwards, to wit, on the eleventh day of said term of said
256 court, the following proceedings were had, to wit:

Appeal, Santa Fé Co., 1st district, C. J. Palen.

THE TERRITORY, FOR THE USE OF W. W. GRIFFIN, administrator de bonis non,
*vs.*
GEORGE T. BEALL ET ALS., APPELLANTS.

This cause again came on to be heard, and was now argued by S. B. Elkins, esq., counsel of the said appellee, and there not being time to conclude the argument of this cause on this day, the same is continued until to-morrow.

And afterwards, to wit, on the twelfth day of said term of said court, the following proceedings were had, to wit:

Appeal, Santa Fé Co.

THE TERRITORY, FOR THE USE OF W. W. GRIFFIN, administrator de bonis non,
*vs.*
GEORGE T. BEALL ET ALS.

This cause again came on to be heard, and was now argued by Mr. Clever, of counsel for the appellants, and the argument in this
257 cause being now concluded, the same is now submitted to the court, and the court not being sufficiently advised in the premises, takes the same under advisement.

And afterwards, to wit, on the 24th day of said term of said court, the following proceedings were had, to wit:

Appeal from Santa Fé County, 1st judicial district, Chief Justice Palen presiding.

THE TERRITORY OF NEW MEXICO, FOR THE USE of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, JOSE Manuel Gallegos, Sigmund Seligman, and Emanuel Spiegelberg.
} Debt.

This cause having been argued by counsel, and submitted to the court

at a former day of this term, and the court having then taken the same under advisement, and being now sufficiently advised in the premises, now announces its decision, by Associate Justice Johnson, affirming the judgment of the court below.

258 It is therefore considered and adjudged by the court that the judgment rendered in this cause in the court below be and is hereby affirmed, with interest thereon at the rate of six per cent. per annum, since the rendition thereof on the twenty-second day of July, one thousand eight hundred and seventy, and that the said plaintiff, the Territory of New Mexico for the use of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased, recover of the said George T. Beall, Abraham Staab, Jose Manuel Gallegos, Sigmund Seligman, and Emanuel Spiegelberg, the sum of one hundred and twenty thousand dollars, the debt found by the said judgment, and forty-eight thousand dollars, the damages of the said plaintiff, found as aforesaid, and interest, such damages and interest amounting to the sum of forty-nine thousand four hundred and eighty-eight dollars. And it appearing, to the satisfaction of the court, that Bernhard Seligman, Lehman Spiegelberg, Felipe Chaves, Manuel A. Otero, and Jose Leandro Perea are

259 securities on the appeal bond of the said appellants herein, it is further considered and adjudged that the said appellee have judgment against said securities for the amount of such damages found in said judgment, interest, and costs. And that the said plaintiff, the Territory of New Mexico for the use of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased, recover of the said appellants, George T. Beall, Abraham Staab, Jose Manuel Gallegos, Sigmund Seligman, and Emanuel Spiegelberg, and Bernhard Seligman, Lehman Spiegelberg, Felipe Chaves, Manuel A. Otero, and Jose Leando Perea, their securities, the said sum of forty-nine thousand four hundred and eighty-eight dollars, as aforesaid, and also the costs in this behalf expended, as well in the court below as in this court, to be taxed, and that execution issue therefor.

Leave to Associate Justice Johnson to file written opinion in vacation, also to Chief Justice Palen to file reasons in writing for judgment of court below.

And afterwards, to wit, on the 25th day of said term of said

260 court, the following proceedings were had, to wit:

THE TERRITORY OF NEW MEXICO, FOR THE use of W. W. Griffin, administrator de bonis non,
*vs.*
GEORGE T. BEALL ET ALS., APPELLANTS.

And now come the said appellants, by their counsel, and move the court to correct the judgment rendered in this cause at the present term of this court, in this, that the judgment rendered is against the appellants and their securities on the appeal bond, whereas it ought to be against the appellants alone and not against their securities, which motion is in the words and figures following, to wit:

Territory of New Mexico, supreme court, Jan'y term, 1871.

GEORGE T. BEALL ET AL.,
*vs.*
THE TERRITORY OF NEW MEXICO, USE, &C.

The plaintiffs and appellants in the above-entitled cause move

261 the court to correct the judgment rendered in said cause, at the present term of the court, in this, that the judgment rendered is against the appellants and their securities on the appeal bond, whereas it ought to be against the appellants alone, and not against their securities.

CLEVER & TOMPKINS,
*Att'ys for Appellants.*

Which motion being argued by counsel, and the court being sufficiently advised in the premises, overrules and denies said motion.

And afterwards, to wit, on the 27th day of said term of said court, being the 4th day of February, A. D. 1871, the following proceedings, among others, were had, to wit:

THE TERRITORY OF NEW MEXICO, FOR THE use of W. W. Griffin, administrator de bonis non,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ Manuel Gallegos, Sigmund Seligman, and Emanuel Spiegelberg, appellants.

262 And now come the said appellants, by their counsel, and now present their bond in error herein, which bond is approved by the court and ordered to be filed, and which said bond is in the words and figures following, to wit:

The supreme court of the Territory of New Mexico, for the district of the Territory of New Mexico.

GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ Manuel Gallegos, Sigmund Seligman, Emanuel Spiegelberg, Felipe Chaves, Manuel A. Otero, and José Leandro Perea,
*vs.*
THE TERRITORY OF NEW MEXICO, FOR THE use of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, deceased.

Know all men by these presents, that we, Abraham Staab, José Manuel Gallegos, Emanuel Spiegelberg, Lehman Spiegelberg, Bernhard Seligman, Felipe Chaves, Manuel A. Otero, José Leandro Perea, Ambrosio Armijo, Charles Probst, August Krischner, Tomas C. de
263 Baca, and Louis Huning, are held and firmly bound unto the Territory of New Mexico in the sum of one hundred thousand dollars, to be paid to the said Territory for the use of the said William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, dec'd, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this first day of February, A. D. one thousand eight hundred and seventy-one.

Whereas the above-named George T. Beall, Abraham Staab, José Manuel Gallegos, Sigmund Seligman, Emanuel Spiegelberg Lehman Spiegelberg, Bernhard Seligman, Felipe Chaves, Manuel A. Otero, and José Leander Perea, have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the

above-entitled suit by the supreme court of the Territory of New Mexico. Now, therefore, the condition of this obligation is such, that
264 if the above-named George T. Beall, Abraham Staab, José Manuel Gallegos, Sigmund Seligman, Emanuel Spiegelberg, Lehman Spiegelberg, Bernhard Seligman, Felipe Chaves, Manuel A. Otero, and José Leandro Perea, shall prosecute their said writ of error to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

A. STAAB. [SEAL.]
J. M. GALLEGOS. [SEAL.]
EMANUEL SPIEGELBERG, [SEAL.]
By L. SPIEGELBERG, *Att'y.*
LEHMAN SPIEGELBERG. [SEAL.]
B. SELIGMAN. [SEAL.]
FELIPE CHAVES. [SEAL.]
MANUEL A. OTERO, [SEAL.]
By M. A. OTERO, *Att'y in fact.*
JOSÉ L. PEREA. [SEAL.]
AMBROSIO ARMIJO. [SEAL.]
CHARLES PROBST. [SEAL.]
AUGUST KIRCHNER. [SEAL.]
TOMAS C. DE BACA. [SEAL.]
LOUIS HUNING. [SEAL.]

265 UNITED STATES OF AMERICA,
*Territory of New Mexico:*

This day personally appeared before me, William Breeden, clerk of the supreme court of said Territory, the above-named Abraham Staab, José Manuel Gallegos, Emanuel Spiegelberg, by Lehman Spiegelberg, his attorney in fact, Lehman Spiegelberg, Bernhard Seligman, Felipe Chaves, Manuel A. Otero, by Miguel A. Otero, his attorney in fact, José L. Perea, Ambrosio Armijo, Charles Probst, August Kirchner, Tomas C. de Baca, and Louis Huning, each and all of whom are to me known to be the persons who signed and sealed the foregoing bond, and each and all of whom acknowledged that they executed the same of their own voluntary act and will, for the purposes therein expressed,

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Santa Fé, N. M., this 2nd day of February, A. D. 1871.

[Seal of supreme court.] W'M BREEDEN, *Clerk.*

Approved:

J. G. PALEN, *C. J., &c.*
B. J. WATERS, *Ass. Justice.*

266 To which bond the following affidavit is attached, to wit:

Supreme court, Territory of New Mexico.

THE TERRITORY OF NEW MEXICO, FOR THE use of W'm. W. Griffin, administrator de bonis non,
*vs.*
GEORGE T. BEALL, ABRAHAM STAAB, JOSÉ Manuel Gallegos, Sigmund Seligman, and Emanuel Spiegelberg.

SANTA FÉ COUNTY, *ss:*

This day personally appeared before me, the undersigned, clerk of the

supreme court of the Territory of New Mexico, Tomas C. de Baca, Ambrosio Armijo, Charles Probst, August K'rchner, and Louis Huning, who, being duly sworn, upon their oaths state, each for himself, that they are respectively worth the sums set opposite their respective names, over and above their just debts and liabilities.

| | | |
|---|---|---|
| | Tomas C. de Baca | $25,000 00 |
| 267 | Ambrosio Armijo | $80,000 00 |
| | Charles Probst | $15,000 00 |
| | August Kirchner | $15,000 00 |
| | Louis Huning | $10,000 00 |

And further say not.

TOMAS C. DE BACA.
AMBROSIO ARMIJO.
CHARLES PROBST.
AUGUST KIRCHNER.
LOUIS HUNING.

Subscribed and sworn to before me, by the above-named Tomas C. de Baca, Ambrosio Armijo, Charles Probst, August Kirchner, and Louis Huning, at Santa Fé, New Mexico, this second day of February, A. D. one thousand eight hundred and seventy-one.

W'M BREEDEN,
*Clerk Supreme Court New Mexico.*

And afterwards, to wit, on the same day as aforesaid, the following affidavit as to the amount in controversy was filed in the office of the clerk of said court, to wit:

268 In the supreme court for the Territory of New Mexico, January term, A. D. 1871.

GEORGE T. BEALL ET ALS.
*vs.*
THE TERRITORY OF NEW MEXICO, FOR THE use of W. W. Griffin, adm'r, &c.

Abraham Staab, being duly sworn, upon his oath states that in the above-entitled cause the amount in controversy between the parties does exceed the sum of one thousand dollars.

A. STAAB.

Subscribed and sworn to before me this 2nd day of February, A. D. 1871, at Santa Fé, N. M.

W'M BREEDEN, *Clerk.*

And afterwards, to wit, on the same day, the following writ of error was lodged in the office of the clerk of said court, to wit:

UNITED STATES OF AMERICA, *ss:*

269 The President of the United States of America to the honorable judges of the supreme court of the Territory of New Mexico, greeting:

Because in the record and proceedings, as also the rendition of a judgment in a plea, which is in the said supreme court, before you, between George T. Beall, Abraham Staab, Jose Manuel Gallegos, Sig-

mund Seligman, Emanuel Spiegelberg, Lehman Spiegelberg, Bernhard Seligman, Felipe Chaves, Manuel A. Otero, and Jose Leandro Perea, and the Territory of New Mexico, for the use of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, dec'd, a manifest error hath happened, to the great damage of the said George T. Beall, Abraham Staab, Jose Manuel Gallegos, Sigmund Seligman, Emanuel Spiegelberg, Lehman Spiegelberg, Bernhard Seligman, Felipe Chaves, Manuel A. Otero, and Jose Leandro Perea, as by their complaint appears: And we, being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done
270 to the parties aforesaid in this behalf, do hereby command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, at the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of said Supreme Court, this first day of February, A. D. one thousand eight hundred and seventy-one.

Issued at office in the city of Santa Fé, with the seal of the supreme court of the Territory of New Mexico for the district of the Territory of New Mexico, dated as aforesaid.

[Seal of supreme court.]

W'M BREEDEN,
271 *Clerk Supreme Court Territory of New Mexico.*

Approved:
J. G. PALEN, *C. J., &c.*
B. J. WATERS, *Ass. Justice.*

Upon which said writ of error is the following endorsement, to wit:

Geo. T. Beall et al. vs. The Territory, use, &c. Copy of writ of error lodged in pursuance of the statute of the United States in such case made and provided for the within named W'm W. Griffin, defendant in error. Clever and Tompkins, att'ys for pl'fs in error.

And afterwards, to wit, on the same day, the following citation and affidavit of service of citation was filed in the office of the clerk of said court, to wit:

United States of America to William W. Griffin, administrator
272 de bonis non of the estate of Charles S. Hinckley, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of New Mexico, wherein George T. Beall, Abraham Staab, Jose Manuel Gallegos, Sigmund Seligman, Emanuel Spiegelberg, Lehman Spiegelberg, Bernhard Seligman, Felipe Chaves, Manuel A. Otero, and Jose Leandro Perea, are plaintiffs in error, and the Territory of New Mexico, for your use

as administrator de bonis non of the estate of Charles S. Hinckley, dec'd, is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Joseph G. Palen and Benjamin J.
273 Waters, judges of the supreme court of the Territory of New Mexico, this first day of February, A. D. one thousand eight hundred and seventy-one.

[SEAL.]

J. G. PALEN, *C. J., &c.*
B. J. WATERS, *Ass. Justice.*

UNITED STATES OF AMERICA,
*Territory of New Mexico, County of Santa Fé:*

This day personally appeared Charles P. Clever, attorney and counsellor at law, a resident of Santa Fé County and Territory aforesaid, of lawful age, who, being duly sworn, upon his oath states that on the fourth day of February, one thousand eight hundred and seventy-one, at Santa Fé County and Territory aforesaid, he handed the foregoing citation to the within-named William W. Griffin, defendant in error, for perusal, and furnished the same with a true copy thereof, at the same time.

C. P. CLEVER.

274 Subscribed and sworn to before me this 4th day of February, A. D. 1871.

W'M BREEDEN,
*Clerk Supreme Court New Mexico.*

UNITED STATES OF AMERICA,
*Territory of New Mexico:*

I, William Breeden, clerk of the supreme court of said Territory, do hereby certify that the above and foregoing two hundred and seventy-four pages contain a full, true, and perfect transcript of the record of the supreme court of said Territory in the above-entitled cause, including the transcript of the record of the district court filed in said supreme court, and the papers filed and the proceedings had in said cause in said court, and translations of original papers in the Spanish language in said cause.

In testimony whereof I have hereunto set my hand and the seal of said court this 2nd day of March, A. D. 1871.

[SEAL.]

W'M BREEDEN, *Clerk.*

275 UNITED STATES OF AMERICA, *ss:*

**The President of the United States of America, to the honorable judges of the Supreme Court of the Territory of New Mexico, greeting:**

**Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said supreme court before you, between George T. Beall, Abraham Staab, José Manual Gallegos, Sigmund Seligman, Emanuel Spiegelberg, Lehman Spiegelberg, Bernhard Seligman, Felipe Chaves, Manuel A. Otero, and José Liandro Perea, and the Territory of New Mexico, for the use of William W. Griffin, administrator de bonis non of the estate of Charles S. Hinckley, dec'd, a manifest error hath happened, to the great damage of the said George T. Beall, Abraham Staab, José Manuel Gallegos, Sigmund Seligman, Emanuel**

Spiegelberg, Lehman Spiegelberg, Bernhard Seligman, Felipe Chaves, Manuel A. Otero, and José Liandro Perea, as by their complaint appears; and we being willing that the error, if any there hath been, should
276 be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do hereby command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, at the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this first day of February, A. D. one thousand eight hundred and seventy-one, issued at office in the city of Santa Fé,
277 with the seal of the supreme court of the Territory of New Mexico, for the district of the Territory of New Mexico, dated as aforesaid.

[SEAL.] W'M BREEDEN,
*Clerk Supreme Court Territory of New Mexico.*

Allowed by J. G. PALEN, *C. J., &c.*
B. J. WATERS,
*Asso. Justice.*

278 (Indorsed ) Geo. T. Beall et al. vs. The Territory, use, &c. Writ of error.

A complete transcript of the judgments, and all things concerning the same within referred to, is annexed to this writ and herewith returned.

W'M BREEDEN,
*Clerk Supreme Court New Mexico.*

(Indorsement on cover:) New Mexico Terr'y sup. court. No. 529. George T. Beall, Abraham Staab, José Manuel Gallegos, Sigmund Seligman, Emanuel Spiegelberg, Lehman Spiegelberg, Bernhard Seligman, F. Chaves, M. A. Otero, José Leandro Perea, plaintiff in error, vs. The Territory of New Mexico, ex rel. W. W. Griffin, adm'r d. b. n. of Charles S. Hinckley, dec'd. Filed 23d March, 1871.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

# Supreme Court

## OF THE UNITED STATES.

George T. Beall, Abraham Staab and others
Plaintiffs in Error,

*vs.*

The Territory of New Mexico, ex relatione W. W. Griffin, Administrator de bonis non of Charles S. Hinckley, deceased,
Defendants in Error.

## Brief for Plaintiffs in Error.

### STATEMENT.

The action was of debt brought in the District Court of the Territory of New Mexico against the

defendant Beall, who had been executor of the will of Charles S. Hinckley, deceased, and the defendants Staab, Gallegos, Seligman and Spiegelberg, upon the administration bond, dated Nov. 2, 1866, which Beall, as principal, and the other defendants as sureties, had executed to the Territory of New Mexico upon the issue of letters of administration to said Beall as executor.

The condition of the bond was, "that whereas, the said principal, George T. Beall, has this day been appointed by the Probate Judge of said county administrator and executor of the estate of Charles S. Hinckley, deceased, according to the last will of the deceased, now if the said executor and administrator shall account for, pay and turn over all the moneys and property of the said estate to the legal heirs of the said deceased, and shall execute the last testamentary will of the said deceased, and shall do all other things relative to the said administration, as required by law or by the order of the Probate Court of the county of Santa Fé, or any other court having jurisdiction in the matter, then and in such case this bond shall be null and of no effect; otherwise it shall remain in full force and effect."

Rec. fol. 11.

The breaches of this condition were assigned as follows: "And for assigning a further breach of said condition, said plaintiff avers, that at the time of the death of said Charles S. Hinckley, to wit, on the 29th day of October, A. D. 1866, at the county of Santa Fé aforesaid, the interest of the estate of said Charles S. Hinckley in the firm of Hinckley, Blake & Wardwell, composed of said deceased in his lifetime and Charles Blake and William V. B. Wardwell, then doing business at Fort Craig, New Mexico, and other places in said territory as sutlers, merchants and traders, was then and there reasonably worth the sum of sixty thousand dollars, and consisted of goods, wares,

merchandize, real estate, mines and credits, which said interest consisting as aforesaid, the said George T. Beall, executor and administrator as aforesaid, on the 10th day of January A. D. 1867, unlawfully, and by verbal agreement and contract, disposed of the same for the sum of forty-six thousand five hundred and thirty-eight dollars and sixty cents to said Charles Blake and William V. B. Wardwell, surviving partners as aforesaid, and in pursuance of said verbal contract and agreement, did agree to receive said sum of money for said interest, thereby allowing said interest of said deceased to remain in the possession of said Charles Blake and William V. B. Wardwell, and by them and the said George T. Beall converted to their own use and benefit, which said interest of said estate, amounting to the sum of sixty thousand dollars, being the assets of said estate, the said George T. Beall, executor and administrator as aforesaid, has neglected and refused, and still doth neglect and refuse, to pay over to the said William W. Griffin, administrator de bonis non of said estate, or any other person lawfully entitled to said assets, contrary to his duty as such administrator and executor, although often requested so to do.

"And for assigning a further breach of said condition, said plaintiff avers, that at the time of the death of said Charles S. Hinckley, the assets belonging to the estate of said deceased, then in the hands of said George T. Beall, were reasonably worth the sum of sixty thousand dollars, which said assets of the value aforesaid, and belonging to said estate, through want of attention, and neglect on the part of said George T. Beall, administrator as aforesaid, and the illegal conduct and action of the said George T. Beall, administrator and executor as aforesaid, in the matter of the administration of said estate, the same became wholly and entirely lost, wasted and dissipated, at to wit, the county of Santa Fé, aforesaid."

To this petition or declaration, the defendants demurred for insufficiency of cause of action, the de-

murrers were overruled, and the decision was excepted to, and forms one of the bills of exception.

Demurrers Rec. fol. 26–29, 35–36.
Decisions " " 30, 36.
Bills of Exception, fol. 48, 57.

Afterwards issue was joined upon pleas, (1) of *nil debet*, (2) that the executor Beall, performed all the duties and obligations, of his bond, and (3) a settlement of his accounts as executor, before the proper Probate Court, his resignation of the office, its due acceptance by the court, and his discharge from duty and liability.

Rec. fol. 39–43.
" " 113–118.

The cause was tried before a jury, which, under the instructions of the Court, found (1) that the defendants owe the plaintiff the sum of $120,000, being the penalty of the bond, and assess the plaintiff's damages for detention of the debt at $48,000; (2) that the defendant Beall did not perform his bond; and (3) that the defendant Beall was not discharged by the Probate Court from *further* liabilities of, to or for the estate of Hinckley.

Upon this verdict judgment was given for the plaintiff against the defendants for $120,000, the debt, and for $48,000, the damages.

Rec. fol. 120–121.

A motion to set aside the verdict and for a new trial was made, on the ground that the verdict was against the law and evidence, and for errors on the trial, as well as for surprise, newly discovered evidence and other grounds extraneous to the record, as set forth in the motion. This motion was denied.

Rec. fol. 122–129.

A motion in arrest of judgment for errors in the record was also made and was denied.

Rec. fol. 163–4.

An appeal was taken to the Supreme Court of the Territory, and upon the bond given by the defendants as principals, Bernhard Seligman, Lehman Spiegelberg, Felipe Chaves, Manuel Otero and Jose Perea joined as sureties.

Rec. fol. 168–9.

The bills of exception in the record are:

*First.*—Upon the decision of the District Court in refusing a continuance of the cause on the motion of the defendants upon affidavits.

Rec. fol. 171–185.

*Second.*—Upon the refusal of the Court to give the instructions to the jury, prayed for specifically by the defendants, as set forth in the bill of exceptions.

Rec. fol. 186–8.

*Third.*—Upon the instructions actually given by the Court to the jury, specifically excepted to by the defendants at the time.

Rec. fol. 189–91.

*Fourth.*—Upon the admission of the bond in suit in evidence at the trial, in face of an objection for variance in the statement of the name of the decedent in the petition and in the bond.

Rec. fol. 192–8.

*Fifth.*—Upon an objection to the admission of a record copy of the letters of administration issued to Beall, (1) because the original was not produced in

evidence, and (2) because no copy of the record or the original was filed with the petition in the cause.

Rec. fol. 199–200.

*Sixth.*—Upon the entry of the verdict of the jury as beyond their finding.

Rec. fol. 201–2.

*Seventh.*—Upon the decisions of the Court upon the motion for a new trial and the motion in arrest of judgment.

Rec. fol. 203–8.

*Eighth.*—Upon the exclusion of evidence offered at the trial by the defendants, (1) in reference to the length of time required to settle up a commercial partnership, such as that in which the decedent was a partner; and (2) as to the depreciation in value in the stock of goods between January, 1867, and January, 1869.

Rec. fol. 209–10.

*Ninth.*—Upon the evidence given at the trial, and the objections and rulings thereon, and the exceptions to such rulings arising at the trial.

Rec. fol. 211–49.

The errors assigned in the Supreme Court of the Territory, on appeal, are set forth in the record.

Rec. fol. 251–4.

The judgment of the Supreme Court affirms, with interest, the judgment below, and includes in the judgment of the Supreme Court and in one joint recovery not only the defendants below but, *also, the sureties on the bond given upon the appeal.*

Rec. fol. 257–9.

A motion to correct this judgment in respect of this

inclusion of the sureties on the appeal bond was denied by the Court.

Rec. fol. 261.

The defendants in the judgment in the Supreme Court of the Territory bring the cause here by writ of error.

Rec. fol. 262–78.

The principal facts of the case upon which the questions of law in the record arise, are as follows:

Charles S. Hinckley, the defendant Beall's testator, was in his lifetime a partner in the trading firm of Hinckley, Blake & Wardwell, established at Fort Craig, and doing business at other places in New Mexico. Hinckley died on the 29th October, 1866; and Beall, who was an officer of the U. S. Army, took out letters of administration upon the will of Hinckley, in which he was named as executor, and gave the bond with sureties now sued on.

Rec., fols. 213–20.

Beall filed an inventory of the testator's estate, and refers to the interest of Hinckley, Blake & Wardwell, as follows:

"The property, rights and credits of the said deceased, Charles S. Hinckley, so far as the undersigned executor has been able to obtain a knowledge thereof, were, at the time of his decease, as follows:

"The firm or partnership of which he was a member with Charles H. Blake & W. V. B. Wardwell, at Fort Craig, and other places in this territory, were owing and due the said deceased the sum of forty-six thousand five hundred and thirty-eight dollars and sixty cents.

"The undersigned being satisfied that the sum stated is correct, has agreed to receive of the said Chas. H. Blake & W. V. B. Wardwell, in full discharge of the capital and profits of the said deceased, the

aforesaid sum, the said Blake & Wardwell have agreed to pay the said sum as soon as they can arrange their affairs to do so, and within a reasonable time,

"The undersigned is satisfied that the said arrangement is the best he could make for the interest of the estate, and that the payment will be made in due time."

Beall filed an account dated May 4th, 1868, of his administration up to date. In this he charges himself with sundry sums, paid by the partnership, amounting to about $5,000, and states the amount still due at $41,556.25. He adds in reference to this amount still due from Wardwell &Blake, surviving partners, "*that they have promised to settle their indebtedness as soon as the old debts of the concern are paid, said debts having been contracted while the late Charles S. Hinckley was a partner of the concern.*" This report was approved by the Probate Court.

Rec., fol. 229–34, 238.

Beall made a further account, dated January 26th, 1869, of his administration up to that date, which showed the account with the firm of Hinckley, Blake & Wardwell *as standing in the same position as in his previous account.* This account was also approved by the Probate Court.

Rec., fol. 234–236.

Beall obtained from the surviving partners a statement of the balances in the account of Hinckley with his firm, as it stood on the books of the firm, resulting in a statement of a "balance on books, Wardwell & Blake" of $46,538.62. In this account, however, Hinckley is credited with the amount of his capital stock in the firm, to wit, $50,000, thus showing that more than the apparent balance in favor of Hinckley with the firm, was made up of *capital stock*, which was in no sense a debt from the surviving partners, and was an

asset of the estate of the deceased partner, *only subject to the payment of all the debts and the liquidation of all the affairs of the firm.*

Rec., fol. 243-6.

Immediately upon presenting his report of Jan. 26, 1869, Beall resigned his office of executor, as he was ordered to Washington on duty, and was not to return to the territory.

SPECIAL SESSION OF THE PROBATE COURT OF THE COUNTY OF SANTA FE, TERRITORY OF NEW MEXICO.

Wednesday, January 27, A. D. 1869.

The Court convened this day, the officers of the same being present, and was declared open.

Having on the twentieth instant adjourned all business upon wills to the next Regular Term of this Court, the Judge, at a Special Session, took action upon the resignation made and presented by George T. Beall, as executor and administrator of the estate of the deceased Charles S. Hinckley, who, at the same time, presented a report of his action since his former report as administrator of said estate, which was examined and approved by the Court.

The Court, in view of the reasons expressed in said resignation, that the said Beall, being an officer of the United States, and being ordered to Washington, and expecting to be transferred to another place, which would prevent his exercising the administration, accepts such resignation, holding the said George T. Beall responsible, under all the requirements of the law, for that which he has done as administrator of the estate of the deceased C. S. Hinckley, pertaining to said administration, until he has turned over to his successor, and instructed that gentleman *cum testamento annexo* of the estate of the deceased Charles S.

Hinckley, of all that has not been administered upon, requiring the said administrator to perform everything required by the law in the premises.

Upon the 28th January, 1869, letters issued to Stephen B. Elkins as administrator *de bonis non*, and he gave bond and took the oath of office.

Rec., fol. 133–43.

Elkins made report of his administration October 30, 1869, in which he says, in respect to the affairs of the firm: "The undersigned further states that he has been unable to collect anything whatever from the surviving partners or from George T. Beall, late executor, belonging to said estate, although his efforts have been repeated and earnest; that according to the report of the late executor, Beall, he sold and disposed of the entire interest of Charles S. Hinckley, deceased, in the firm of Hinckley, Blake & Wardwell, for forty-six thousand five hundred and thirty-eight $\frac{60}{100}$ dollars to said surviving partners, Charles Blake and W. V. B. Wardwell, which said sale is positively denied by said Blake and Wardwell; that said Blake and Wardwell have promised from time to time to pay the amount they owe the estate, but up to date the undersigned has failed to collect from them one dollar; that said Wardwell is doing business at Fort Craig, N. M., and Charles Blake has removed to Colorado Territory, having disposed of all his interests in the firm of Hinckley, Blake & Wardwell to said Wardwell, as the undersigned is informed and believes.

"The undersigned states that he has no means of judging or forming an estimate of the value of the assets of said estate; that from the best information he can gain from all sources, he believes the interest of Charles S. Hinckley in the firm of Hinckley, Blake & Wardwell was worth about sixty thousand dollars; but to realize one-fourth of this amount, a resort to courts must be had at once."

Elkins appears to have resigned immediately upon making this report, for under date of Oct. 30, 1869, Wm. W. Griffin executes a bond as administrator *de bonis non*, in which Elkins is a surety, and, subsequently, Elkins appears as Griffin's attorney in this suit against Beall and his sureties.

On the 8th day of March, 1870, Griffin files an account as administrator *de bonis non*, in which he makes no mention in any form of the interest of the estate of Hinckley in the firm of Hinckley, Blake & Wardwell.

Rec., fol. 156–60.

Elkins was a witness, as well as attorney, for the plaintiff, and apparently the only witness. He testified, in substance: That *early in* 1868 Elkins was employed as attorney for the heirs of Hinckley to take such action as he might think proper. That he called upon Beall and enquired about his collection from the firm, whether he had a note for the amount; Beall said "all he had was in the inventory; when he sold the property he supposed they would pay for it; he thought the sum was the fair value of the interest of the estate."

Rec., fol. 242–3.

Immediately after his own appointment, Elkins says, he made a demand of Blake & Wardwell, and they said they had no personal property. Elkins told Beall in his conversations about the estate, that he did not sufficiently secure the estate. Beall "said he thought at the time they would pay, but they had deceived him; he still hoped they would pay. He seemed to regret their action, and to be astonished at it."

Elkins stated to Beall that Blake & Wardwell wanted to charge for depreciation of stock and bad debts; he said they could not be admitted; that they owed the sum stated in the inventory, less the payment.

"These conversations continued *up to February*, 1870."

Upon cross-examination, Elkins admitted that he, while administrator, *brought no suit against Blake & Wardwell, and that he had been Griffin's attorney, and there was no suit against Blake & Wardwell.*

Elkins "on being asked by defendants' counsel if Beall had ever told him that he had sold Hinckley's interest to Blake & Wardwell, answered, I don't recollect that he ever told me so; I inferred so from Beall's conversations, who treated it as a sale."

Upon this state of the evidence, and notwithstanding appropriate exceptions taken during the trial, judgment was had against Beall and his sureties, upon a suit on his administration bond, in favor of the second administrator *de bonis non*, for the whole amount of the capital Hinckley had nominally in the firm, not drawn out before his death, without the least evidence that the firm ever realized, or could have realized, in liquidation, such, or any amount of capital, or that Beall could ever have collected any portion thereof from the survivors, if anything was really due, or any evidence that at the time of Beall's resignation, accepted by the court upon approval of his account, the claim against the firm was not as valuable as it had been.

The errors in the record and bills of exception will be specifically considered under the following points:

## POINTS.

**First Point.**—The judgment of the Supreme Court of the Territory cannot be sustained for this error, apparent upon its face, to wit:

The action and the judgment therein in the Court below were against George T. Beall, Abraham Staab, Jose Manuel Gallegos, Sigmund Seligman, and Emanuel Spiegelberg. This judgment was carried by said defendants to the Supreme Court of the Territory, where errors of law in the record and bills of exception were reviewable. Upon this appeal the appellants (defendants below) gave an appeal bond under seal, conditioned for the prosecution of the appeal, and performance of the judgment of the Court, *by the appellants*, and payment of costs and damages by them. (Rec., fols. 168–9).

To this bond Lehman Spiegelberg, Felipe Chaves, Manuel Antonio Otero, and Jose Leandro Perea became parties as sureties for the performance of its condition by the principals, and not otherwise.

The Supreme Court of the Territory, in affirming the judgment of the Court below against the appellants, *included in one joint judgment the sureties in the appeal bond*, without any suit, issue, trial, hearing, presence or representation by attorney or otherwise of the sureties, and in the cause against the defendants below brought into the Supreme Court only on error.

This manifest error, at common law, is saved from being such, if at all, by the following provision of the laws of New Mexico, which occurs in a chapter entitled "Costs," and is found as § 5, page 290, of "Revised Laws of New Mexico":

"In case of appeals in civil suits, if the judgment by the appellate court be against the appellant, it shall be rendered against him and his securities on the appeal bond."

(I.) The bond, which forms the contract of the sureties, and is of common law form and jurisdiction, secured by a penalty, contains no stipulation on their part acceding to or engaging for any such summary judgment or for any exposure to judgment otherwise than according to the course of the common law.

It cannot, therefore, be said that the sureties have, in terms, contracted to submit to judgment without suit or trial.

(II.) The Constitution of the United States provides that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

Cons. U. S., Am. VII.

Under this provision of the Constitution the judgment of the Supreme Court of New Mexico is manifestly void.

(III.) This *bond*, which is, and by the laws of New Mexico allowing it is required to be, wholly a contract *inter partes*, suable of course everywhere, and submitted in no respect to any dominion or administrative control of the Court, is not to be confounded with *a recognizance to the commonwealth of record in its courts*, and there to be executed in judgment or not, at the discretion of the Court, and in completion of the record of which the recognizance is already a part.

It is unnecessary, therefore, to consider how such a record would stand under this provision of the Constitution.

(IV.) This common law contract is, also, to be distinguished from the admiralty stipulation whereby the *res*, in suits *in rem*, is replaced by the stipulator's engagement that the *execution*, in case of condemnation. shall run against the stipulator's property, as it would have run against the *res* had it not been subtracted.

The provision of the Constitution does not control such suits, and as matter of contract the stipulators make themselves parties to the process

of the Court upon delivery to them of the *res* for which they, thus, substitute their engagement.

Upon proper motion the Supreme Court of the Territory refused to correct this error in the judgment, and the judgment should be reversed for this error manifest upon the record.

Rec., fol. 261.

**Second Point.**—The action, upon its merits, by the administrator *de bonis non* against the original executor and his sureties upon the bond, is wholly without precedent and cannot be maintained.

Redf. Wills 90. 91. + notes + cases cited -

An executor is a trustee of, not a debtor for, the assets of the estate. His administration bond is given as security to those interested in the estate, whether as legatees or creditors, for the due execution of the trust and against loss from a breach of trust. Upon an accounting, in the Probate Court or in Equity, concerning the trust and an ascertainment, on the principles of trust accountability, of the amount with which the executor should be charged, his bond may then be sued in the name of the State, upon the order of the Probate Court, the liability of the executor already established upon his accounting, being conclusive upon the sureties in the suit on the bond.

2 Redf. Willopp. 82-3.

In this case no such accounting in respect of the trust is shown or took place. No order of the Probate Court directing a suit on the administration bond is shown.

Paine vs Stone
10 Pick. 7
13 Vt. Rep. 1
16 Id. 2
21 Id. 1
24 Id. 4

On the contrary, the action is put upon the theory of the executor becoming a *debtor* of the estate for the whole nominal balance due the decedent on the books

of his partnership, without any other evidence than the mention of the state of the firm accounts in the executor's inventory.

So, too, the action is sought to be maintained, not only without an accounting in the Probate Court, charging the executor, and an order of that court authorizing the action, but upon an actual accounting by the executor, accepted by the Probate Court, a relinquishment of the trust, and an acceptance by the court of the executor's resignation with no other reserve or condition in his discharge than that he was to be responsible "*until* he has turned over to his successor and instructed that gentleman, *cum testamento annexo* of the estate of the deceased Charles S. Hinckley, of all that has not been administered upon." (Rec., fol. 100.)

At this resignation and its acceptance the executor "presented a report of his action since his former report as administrator of said estate, *which was examined and approved by the court.*" (Rec. fol. 99.)

Unless it can be pretended that upon this accounting the retiring executor, instead of being *discharged* by the court with an approval of his accounts, was charged by the court as a debtor for an ascertained breach of his trust for not having collected what his account plainly showed to be outstanding, this action cannot be maintained and the motion in arrest of judgment should have been granted, and its denial constitutes error, for which the judgment should be reversed. (Rec., fol. 163–4.)

An examination of all the authorities will show that no case recognizes or tolerates charging an executor as a debtor to the estate, suable by the administrator *de bonis non*, upon a failure to collect an asset, without proof both that it might have been collected without willful neglect, and has been lost by such willful neglect.

In the case of "Goods of Hall, 1 Hag. Ecc. Rep., 139," the action alluded to was against the executors

of a deceased administrator (solely, without joining the sureties), for a balance in the hands of the administrator at his bankers belonging to the estate.

In Adams *vs.* Johnson, 7 Blackf., p. 528, the action was for money of the estate in the hands of the former administrator, and loaned by him under circumstances making it waste.

The action, in the name of the administrator *de bonis non*, was sustained *solely on the provision of the statute of Indiana* authorizing such an action.

All the cases in the books upon which an executor has been charged for an asset lost, are believed to be upon an accounting in the probate court or in equity, establishing upon the special circumstances of each case an accountability by reason of negligence and loss assignable to such negligence.

As to regularity of procedure by accounting in the Probate Court, and a decree fixing the executor's liability, and an order of the Probate Court directing a suit upon the administration bond.

People *vs.* Corlies, 1 Sand, S. C. R., 189.
People *vs.* Downing, 4 Id., 228.
People *vs.* Barnes, 12 Wend., 492.

**Third Point.**—Upon the evidence, it was apparent that the only possible form or pretence for charging the executor Beall, in respect of the asset of Hinckley's estate, which consisted of his interest in the firm of which he had been a member, was upon a consideration whether, upon all the circumstances, Beall had, by act or omission in dealing with that asset, by his negligence caused a loss to the estate for which a trustee should be charged.

The necessary elements of this enquiry were:

*First.*—The character of the asset itself, to wit, a

mere right of the executor to receive from the surviving partners the interest of Hinckley appearing on the winding up of the concern and the payment of its debts, *the title, possession and administration of the property and credits of the firm meanwhile remaining, incontrovertibly, in the surviving partners?*

As to the relation of the surviving partners to the assets of the firm and their administration, and the complete subordination of the decedents' representatives to that control.

Evans *vs.* Evans, 9 Paige, 178.

Waring *vs.* Waring, 5 N. Y. Surr. R. (1 Redfield Rep.), 205.

Thompson *vs.* Brown, 4 John, Ch. R., 619.

son vs. Thomson
adf. (Sur.) R. 34-5.

[In this last case Chancellor Kent, upon full consideration of the authorities, holds that "Executors and administrators, or trustees, acting *with good faith, and without any wilful default or fraud*, will not be responsible for the loss that may arise"—p. 628.]

o vs. Downing
333 Db.

Montgomery *vs.* Dunning, 2 Brad. (Surr. Rep), 220.

berts vs. Wood
3 Paige 517.

2 Redf Wills 172.

*Second.*—The value of the asset, and its collectability, in time and in fact, within a reasonable date after Beall took out letters, only ascertainable by an actual scrutiny of the affairs of the firm, its property and credits.

der vs. Kuhn
Db. 172.

*Third.*—Whether Beall, the executor, in not collecting more than he did, was guilty of negligence at and before the time of his resigning his trust, in January, 1869, which should charge him with any loss or depreciation of the asset which had then happened?

*Fourth.*—What the actual measure of such loss, if any, to the estate was, by reason of Beall's neglect up to the time of his resignation; that is to say, how much of this ultimate interest of Hinckley's estate in the liquidation of the affairs of his firm, that might have been collected by Beall within his two years, had become uncollectible, by embarrassment or insolvency, at the time of Beall's resignation?

*Fifth.*—How far Beall, acting uprightly and in good faith upon the principles on which a court of equity deals with a trustee, should be charged with a disastrous result, if any had occurred?

Now, upon this state of the question, the defendants asked for these instructions to the jury:

"The defendants, by their counsel, move the Court to instruct the jury that, unless they believe from the evidence that the defendant George T. Beall failed to perform his duty as administrator in the administration of the estate of C. S. Hinckley, deceased, they must find for the defendants.

"That, unless they believe from the evidence that the defendant George T. Beall sold a portion of the property belonging to the estate of the said C. S. Hinckley, and converted the same to his own use, they must find for the defendants.

"That unless they believe from the evidence that the amount due to the estate of C. S. Hinckley, and from Messrs. Blake and Wardwell, has been entirely lost to said estate, and that loss resulted from the acts or negligence of the said defendant George T. Beall they must find for the defendants.

"That the jury in determining whether or not the said George T. Beall, complied with all of his duties as such administrator, are authorized to take into consideration the fact that he made his

returns to the Probate Court which returns were by the Probate Court accepted and approved, and also that the said Probate Court, accepted the resignation of said Beall, of the trust as such administrator.

" That Messrs. Blake & Wardwell, as the surviving partners of the deceased Hinckley, had by law the right to the possession and disposition of the goods, wares and merchandize belonging to the partnership of which the said deceased was a member, and also entitled to collect the debts due said firm."

There is manifest error in the refusal of the learned court, to give the instructions prayed for, and the judgment should be reversed upon this bill of exceptions.

An outstanding debt is not assets in the hands of an administrator, " where there has not been gross negligence, or collusive, fraudulent, and unreasonable delay in collecting it."

Ruggles *vs.* Sherman, 14 John., 442.
Thompson *vs.* Brown, ch. 619.
Hughes *vs.* Empson, 22 Beav., 183.
Clark *vs.* Holland, 19 Id., 271.

An administrator is not chargeable wlth the consequences of a disastrous exercise of his discretion, unless it be accompanied with such negligence as raises a presumption of wilful misconduct.

Dillebaugh's Estate, 4 Watts, 177.

**Fourth Point.**—The grounds of the refusal of the court, to give the instructions prayed for, and the magnitude and profoundness of the error at the trial, upon which the verdict was obtained, are apparent

upon an examination of the instructions actually given. The learned court, charged the jury.

" On the part of the plaintiff in this cause, it is contended that the defendant George T. Beall, as administrator of Charles S. Hinckley, deceased, sold the interest of Hinckley's estate, in the property and effects of the firm of Hinckley, Blake & Wardwell, to Blake & Wardwell, the surviving partners, of the firm, for the sum of $46,588, on credit, without taking any security for the same.

" In the opinion of the Court the statements of the inventory filed by Beall in the Probate Court, which are evidence in the cause, and the evidence of Stephen B. Elkins, establishes the fact of such sale. By selling this property on credit, Beall becomes personally liable in law to the estate for the amount for which the property was sold, and if the jury from the evidence arrive at the same conclusion with the Court, they should find for the plaintiff, and assess his damages at $41,566, with interest at six per cent., such interest to commence six months after the inventory was filed, January 10th, 1867.

" The approval by the Probate Judge of the annual reports of Beall did not release or discharge Beall from his liability, or in any way affect such liability as regards the matter in controversy in this suit.

" In this case the fact that Elkins or Griffin as administrator may have failed to sue, does not affect Beall's liability on his bond in any way.

" If an executor sells at private sale property of an estate, and fails to collect the amount due, he is personally responsible.

" In civil cases the Court is the judge of the law, and the jury is bound by the instructions of the Court.

" The fact that Elkins, as administrator, demanded any money from Beall and Wardwell, does not relieve George Beall of any of his responsibility for any of his acts as administrator."

These instructions make the defendants liable upon

the most palpable misconceptions of the evidence, and of the law, and upon both heads the instructions are peremptory.

(I.) There is not the least foundation for the interpretation of the evidence on the computation of the apparent interest of Hinckley in the firm, stated as an account by the surviving partners, and laid before the probate court by the executor in his inventory, *as a sale* of Hinckley's interest by the executor, whether considered in connection with Elkin's oral testimony or not.

The true and only character which law and common sense alike puts upon this evidence is, that the surviving partners gave from their books the balances of the accounts which entered into the general balance of Hinckley's partnership account, and the executor accepted the statement as correct, and laid it before the probate court as a statement of the defendant's interest in the firm.

There is no evidence that this is not a true exhibit of what Hinckley's estate would realize from the winding up of the concern, *if* all the assets of the firm were collected and the surviving partners duly accounted for them.

There is no evidence that any transaction whatever took place between Beall, the executor, and the surviving partners, except the delivery and acceptance of the partnership accounts.

In the instructions of the Court, therefore, on the legal construction of this evidence, there is manifest error, and the judgment should be reversed on this exception.

(II.) But there was palpable error in the instructions of the Court, which charged the executor with the price of the supposed sale, upon the ground that he had sold *on credit*, or upon the ground that *he had failed to collect the price*, even if there had been

proper evidence and a proper instruction on the question of a sale.

Undoubtedly, where an executor sells tangible property and delivers it without payment, or what is regarded by a Court of Equity as reasonable security, he may be charged as trustee for negligence with the value of the property, upon the failure of the purchaser to pay.

Thus, leasehold estate was sold and possession delivered without security, and loss ensued. Chancellor Kent, in equity, held the administrator liable, in the actual circumstances, for negligence.

King *vs.* King, 3 John, Ch. R. 552.

And Chancellor Walworth, in a like disposition of leasehold estate, held the administrator liable, but regarded it as a *technical* liability to which the administrator was entirely justified in putting in a *technical* estoppel.

Orcutt *vs.* Orms, 3 Paige, 464.

But, in regard to a disposition of the ultimate interest of a deceased partner in the winding up of a firm by the surviving partners, on fixing the amount and awaiting the liquidation of the firm for its payment, neither reason nor authority imputes to such a transaction the consequences of a sale and delivery of property in possession, upon credit.

The title, possession and control of the property is already in the surviving partners, and the executor has no right to demand security nor to exact payment, except as the liquidation of the affairs of the firm furnishes the means of payment.

Undoubtedly, in dealing with an asset of this character, and upon a loss upon the same appear-

ing, a court of equity may find reason to charge an executor upon the actual circumstances of the case, with whatever loss may be clearly imputable to his negligence.

In the instructions of the court, therefore, charging the defendants with the price of the supposed sale, there is manifest error, and the judgment should be reversed on this exception.

(III.) The instructions of the court, that the dealing of the Probate Court with the accounts of Beall, as executor (and his resignation and its acceptance) did not discharge Beall, and that the dealing of his successors in the administration with this asset, did not affect the question of Beall's liability in this suit, were also erroneous.

Where an administrator is charged upon an accounting with an asset of an estate, for negligent failure to realize it, and his office continues, and the negligence is all his own, to charge him as debtor for the asset, leaves him the means of relieving himself from loss, wholly or *pro tanto*, by collecting the asset.

But Beall's situation, and the liability of his sureties, in the actual circumstances of the successive administrations of this estate, was very different.

Upon these instructions of the court, Beall and his sureties may be held to this peremptory payment, although (1) the asset was good when Beall terminated his administration, and it has been lost by the negligence of his successors; or (2) although the asset be still good and collected by the present administrator.

For this error, then, the judgment should be reversed.

**Fifth Point.**—There was error in the admission of the *copy* of the letters of administration instead of the original, as stated in the bill of exceptions, at folios 199–200 of the Record.

No legal foundation for a copy instead of the original had been laid in the evidence.

There was also error in allowing this paper to be given in evidence when neither it, nor any copy of it, had been filed in the cause, as required by the Statutes of New Mexico, with the consequence of exclusion of the paper not so filed.

Rev. Laws N. M., p. 196, §§ 21, 22.

**Sixth Point.**—There was error in the exclusion of the evidence offered by the defendants, as shown in bill of exceptions at folios 209–10 of the Record.

"The defendants produced Samuel Ellison, who was sworn, and proposed to ask him, whether he knew, or not, how long it takes to settle up a large commercial partnership; to which the plaintiff objected, and the Court sustained the objection and refused the question to be asked.

"The defendants produced Pablo Delgado, who was sworn, and proposed to ask him, what was the difference, in this country, between a stock of goods in January, 1867, and January, 1869; to which the plaintiff objected, and refused to let the question be asked."

The question to Ellison was introductory of evidence to show that there had been no delay on the part of Beall, before retiring from the administration, in not collecting from the partnership what was only payable after the affairs of the partnership should have been liquidated.

The question to Delgado was to show that the asset to wit, the resulting interest in the partnership, had been reduced from its nominal figure on the accounts of the firm, in 1867, by the fall in value of the stock before there was any laches in not having collected it.

**Last Point.**—The judgment below, in the Supreme Court of the Territory, and that in the District Court, should be reversed, and a new trial ordered.

Wm. M. Evarts,
Of Counsel for
Pltffs. in Error.

# Supreme Court of the United States.

GEORGE T. BEALL AND OTHERS

*against*

THE TERRITORY OF NEW-MEXICO, *ex relatione* W. W. GRIFFIN, ADMINISTRATOR *de bonis non* OF CHARLES S. HINCKLEY, DECEASED.

## Statement and Points on behalf of the Defendant in Error.

BARLOW, LAROCQUE & MACFARLAND, *Attorneys.*
W. W. MACFARLAND, *of Counsel.*

New-York:
JOHN W. AMERMAN, LAW PRINTER,
No. 47 CEDAR STREET.
1872.

# SUPREME COURT

## OF THE UNITED STATES.

GEORGE T. BEALL, ABRAHAM STABB, JOSE MANUEL GALLEGOS, SIGMUND SELIGMAN, EMANUEL SPIEGELBERG, LEHMAN SPIEGELBERG, BERNHARD SELIGMAN, F. CHAVES, M. A. OTERO, JOSE LEANDRO PEREA, Plaintiffs in Error,

*vs.*

THE TERRITORY OF NEW-MEXICO, *ex relatione* W. W. GRIFFIN, Administrator *de bonis non* of CHARLES S. HINCKLEY, deceased, Defendant in Error.

*Statement and Points on behalf of the Defendant in Error.*

### STATEMENT.

This is a writ of error to the Supreme Court of the Territory of New-Mexico.

The material facts are as follows: Charles S. Hinckley died at Santa Fé, in the Territory of New-Mexico, on the 29th day of October, 1866. (Fol. 4.) At the

time of his decease, he was a member of a mercantile copartnership, consisting of himself, Charles Blake and William V. B. Wardwell, and they carried on business at Fort Craig and other places in the Territory of New-Mexico. (Fol. 4.)

On the 2d day of November, 1866, the plaintiff in error, George T. Beall, was appointed "administrator and executor of the estate of Charles S. Hinckley, deceased, according to the last will of the said deceased," and upon such appointment he gave a bond, conditioned "to account for, pay and turn over, all the moneys and property of the said estate to the legal heirs of the said deceased, and to execute the last testamentary will of the said deceased, and to do all other things relative to the said administration, as required by law or by the order of the Probate Court of the County of Santa Fé, or any other court having jurisdiction in the matter." (Fols. 10 and 11.)

Beall, in pursuance of his appointment, on the 10th day of January, 1867, made and filed in the Probate Court an inventory of the assets of the estate, in which, among other things, he said, "the firm of partnership of which he (Hinckley) was a member, with Charles H. Blake and W. V. B. Wardwell, at Fort Craig and other places in this Territory, were owing and due the said deceased the sum of forty-six thousand five hundred and thirty-eight dollars and sixty cents. The undersigned being satisfied that the sum stated is correct, has agreed to receive of the said Charles H. Blake and W. V. B. Wardwell, in full discharge of the capital and profits of the said deceased, the aforesaid sum. The said Blake and Wardwell have agreed to pay the said sum as soon as they can arrange their affairs to do so, and within a reasonable time. The undersigned is satisfied that the said arrangement is the best he could make for the interest of the estate, and that the payment will be made in due time." (Fols. 19 and 20.) He subsequently, in the year 1867, rendered an account to the Court of Probate, in which he charged himself with a balance due from Wardwell and Blake, in this manner:

"April 30, 1868. To amount due from Wardwell and Blake,.....$41,556.25,"

(page 22, folio 59,) and in a subsequent account rendered in 1868, (folio 65, page 24,) he charges himself with the same item.

Beall resigned, and his resignation was accepted by the Probate Court, and Stephen B. Elkins was appointed administrator *de bonis non* on the 28th day of January, 1869. (Folios 133 and 134.) At the time of Beall's resignation the debt due to him from Blake and Wardwell, on account of the interest of the deceased in the assets of his firm, which he had sold to them, remained uncollected and unpaid. Elkins made a report to the Probate Court on the 22d day of October, 1869, (page 53,) in which he stated his efforts to collect this debt, and that it was desperate and uncollectable. Shortly after, on the 30th day of October, 1869, Elkins resigned, and W. W. Griffin was appointed administrator *de bonis non*, to succeed him. (Folios 152 and 153.) Directly thereafter, on the 8th day of November, 1869, this action was commenced. It is an action upon the administration bond of Beall. Three breaches are assigned. First, the general breach, by not performing the duty undertaken to be performed in the administration of the estate. The other two are founded upon the neglect of Beall to account for the partnership assets before referred to. The fact that Beall made no effort to collect the assets in question, but sold them without security to the surviving partners, is established by his own inventory and accounts before mentioned, and by the testimony of his successor, Elkins. (Fol. 242.) The case came on to be tried before Judge Palen and a jury at the July Term of the District Court, 1870.

The judge charged the jury as follows: "On the part of the plaintiff in this case, it is contended that the defendant, George T. Beall, as administrator of Charles S. Hinckley, deceased, sold the interest of Hinckley's estate in the property and effects of Hinckley, Blake and Wardwell, to Blake and Wardwell, the surviving partners of the firm, for the sum of forty-six thousand five hundred

and eighty-eight dollars on credit, without taking any security for the same. In the opinion of the court, the statements of the inventory filed by Beall in the Probate Court, which are evidence in the cause, and the evidence of Stephen B. Elkins, establishes the fact of such sale. By selling this property on credit, Beall becomes personally liable in law to the estate for the amount for which the property was sold; and if the jury, from the evidence, arrive at the same conclusion with the court, they should find for the plaintiff, and assess his damages at forty-one thousand five hundred and fifty-six dollars, with interest at six per cent., such interest to commence six months after the inventory was filed, January 10, 1867. The approval by the Probate Judge of the annual reports of Beall do not release or discharge Beall from his liability, or in any way affect such liability as regards the matter in controversy in this suit. In this case, the fact that Elkins or Griffin as administrator may have failed to sue, does not affect Beall's liability on his bond in any way. If an executor sells at private sale property of an estate, and fails to collect the amount due, he is personally responsible. In civil cases the court is the judge of the law, and the jury is bound by the instructions of the court. The fact that Elkins, as administrator, demanded any money from Blake and Wardwell, does not relieve George T. Beall of any of his responsibility for any of his acts as administrator." (Folio 189.)

Under this charge the jury rendered a verdict in favor of the plaintiff, and assessed the damages at forty-eight thousand dollars, upon which verdict judgment was entered. An appeal was taken to the Supreme Court of the Territory. (Fol. 167.) An appeal bond was given, conditioned that the appellants should perform the judgment of the court, and pay the damages and costs that might be adjudged against them upon their said appeal.

There is a provision in the *Revised Statutes of New-Mexico* which reads as follows:

"In case of appeal in civil suits, if the judgment by the appellate court be against the appellant, it shall be ren-

dered against him and his securities on the appeal bond." (Section 5, page 290.)

In pursuance of this statutory provision, when the judgment was affirmed by the Supreme Court of the Territory, (fols. 257, 258 and 259,) judgment was rendered against the appellants and the sureties upon the appeal bond.

## POINTS.

FIRST.—The suit is brought by the proper party, plaintiff.

*Redfield on Wills*, p. 91.
*Williams on Executors*, side page 470.
In the goods of Hall, 1 *Hag.* 139.
Adams *vs.* Johnson, 7 *Blackf.* 528.

SECOND.—It is a violation of duty on the part of an executor to permit assets, whatever their nature, to remain out on personal security, even though the testator may have placed them there. The executor must call them in with all diligence, and promptly resort to legal proceedings, if necessary, and *a multo fortiori*, it will be a violation of duty to convert assets into a personal and unsecured debt. In either case the executor becomes personally liable and accountable for such assets to the estate.

*Perry on Trusts*, Section 440.
Bailey *vs.* Young, 4 *Young & Collyer Ch.* 226.
Wells' Appeal, 22 *Penn. State*, 330.
Mucklon *vs.* Fuller, *Jacob*, 198.
Tebbs *vs.* Carpenter, 1 *Maddock*, 297.
Lowson *vs.* Copeland, 2 *Brown's Ch. Rep.* 130.
Cainey *vs.* Bond, 6 *Bevan*, 486.
Attorney Gen'l *vs.* Higgam, 2 *Young & Collyer Ch.* 634.

Hemphill's Appeal, 18 *Penn. State*, 303.
Howell *vs.* Evans, 5 *Vesey*, 839.
Bullock *vs.* Wheatley, 1 *College*, 130.
Clough *vs.* Bond, 3 *M. & C. R.* 496.
Pray's Appeal, 34 *Penn.* 100.
Barton's Appeal, 34 *Penn.* 100.
Kimball *vs.* Reading, 11 *Foster*, 352.
Mills *vs.* Mills, 7 *Simon*, 509.
Howe *vs.* Dartmouth, 7 *Vesey*, 150.
Price *vs.* Anderson, 15 *Simon*, 473.
Horton *vs.* Brocklehurst, 29 *Bevan*, 511.
Paddon *vs.* Richardson, 7 *De G. M. & G.* 563.
Wolfe *vs.* Washburne, 6 *Cowan*, 261.

If the executor will excuse himself for not having instituted the usual legal proceedings, he must clearly establish that it would have been futile.

Clapp *vs.* Holland, 19 *Bevan*, 262.
Hobday *vs.* Peters, 38 *Bevan*, 603.
Alexander *vs.* Alexander, 12 *Irish Eq.* 1.
Maitland *vs.* Bateman, 16 *Simons*, 233.
Walker *vs.* Simons, 3 *Swans.* 71.
East *vs.* East, 5 *Hare*, 43.
Ratcliff *vs.* Winch, 17 *Bevan*, 217.
Hall *vs.* Hall, 11 *Irish Eq.* 370.
Stiles *vs.* Guy, 16 *Simons*, 232.

Third.—It is a plain violation of duty on the part of an executor to sell assets of the estate without adequate security and upon individual credit; and by doing so, he himself assumes the debt in legal intendment, and the law casts upon him a direct primary obligation for the value of the assets so disposed of, or the debt so created.

*Williams on Executors*, 1636.
Stiles *vs.* Guy, 16 *Simon*, 230.
King *vs.* King, 3 *Johnson's Chan.* 552.

The State, on the relation of Adams, administrator of Johnson, 7*th Blackford*, 528.
Palmer *vs.* Anderson, 1 *Doug.* 422.
Long's Estate, 6 *Watts*, 46.
Dillebaugh's Estate, 4 *Watts*, 177.
Lidderdale *vs.* Robinson, 2 *Brock.* 164.
Stark *vs.* Hunton, 2 *Green's Ch.* 307.
Betts *vs.* Blackwell, 2 *Stewart & Porter*, 373.

FOURTH.—The principles above referred to, in their broadest scope and meaning, are all applicable to the case at bar. The principal part of the assets of the estate, the administration of which was confided to Beall, consisted of the undivided interest of the deceased in the assets of his firm, and those assets consisted of personal and tangible property of various kinds, and bills receivable, the true value of which was agreed to be, and as against Beall must certainly be taken to have been $46,538 62. Instead of converting these partnership assets into money, in the ordinary proper and usual course of administration, he sold them to the surviving partners on their individual credit, without security, and nothing can be plainer than that by so doing he made the debt his own, and he, together with his sureties, became responsible for it. That it became an uncollectable debt, although quite immaterial, as we have seen, he himself admits.

FIFTH.—If the foregoing positions are well taken, it necessarily follows that the charge of the judge at the trial was right. There appears to be nothing in the assignment of errors below (folio 251) calling for any observations. They relate chiefly to matters of practice and interlocutory proceedings, none of which can be assigned as error, and with which the court has nothing to do.

Chiang Ke *vs.* U. S., 3 *Wallace*, 320.
Wright *vs.* Hollingsworth, 1 *Peters*, 168.
Young *vs.* Martin, 8 *Wallace*, 354.
Downey *vs.* Hicks, 14 *Howard*, 240.
Hoff *vs.* Hutchinson, 14 *Howard*, 586.
Parks *vs.* Turner, 12 *Howard*, 39.
Porter *vs.* Rowney, 10 *Mass.* 64.

SIXTH.—The judgment should be affirmed.

W. W. MACFARLAND,
*Of Counsel.*

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

# Supreme Court

## OF THE UNITED STATES.

George T. Beall, Abraham Stabb and others,
Plaintiffs in Error,

*against*

The Territory of New Mexico, *Ex Relatione* William W. Griffin, Administrator *de bonis non* of Charles S. Hinckley, deceased,
Defendant in Error.

*Supplemental Brief for Defendant in Error.*

**First.**—To the first point of the plaintiffs in error, we reply:

1st. That judgment was rightly rendered against the sureties on the appeal bond, as well as against the defendants below, if the statute of

the territory of New Mexico authorizing such a judgment was a valid statute.

In that case, in legal intendment, they entered into their obligation with full notice of it, and subject to its provisions, and it became, upon familiar principles, as much a part of their obligation as though it had been in form therein written. It is, in its legal nature, by force of the statute and the acts of the parties, simply an obligation, attended by a power to confess judgment on the happening of the contingency provided for, an obligation which, in one form or another, is very common.

2d. The validity of the statute is in no wise affected by any provision in the Constitution of the United States. It is well settled that the amendments to the Constitution of the United States were not intended to control the proceedings of the State Courts.

Wood *vs.* Wood, 2 Cowan, p. 19.
Murphy *vs.* The People, 2 Cowan, 815.
Livingston *vs.* The Mayor of New York, 8 Wend., 85, 100.
Warren *vs.* The Mayor of Baltimore, 7 Peters, 250.
Livingston *vs.* Moore, 7 Pet., 551.
Colt *vs.* Evers, 12 Conn., 243.
In the Matter of Smith, 10 Wend., 449.
Lee *vs.* Tillotson, 24 Wend., 337.

Within the sphere assigned by the organic act, to the territorial power of legislation, the legislation of a territory stands upon the same footing, in point of law, as that of a State. When creating a territory, Congress may give to it a greater or less measure of legislative power, and it may, from time to time, in virtue of its superior and controlling authority, en-

large or restrict the power expressly conferred, but, in the exercise of the powers conferred and existing, there is no difference between a State and a territory. Neither can make laws prohibited by the Constitution of the United States, and that prohibition applies in exactly the same way, and to the same extent, to the one, as the other, the only difference between the two being, that in the case of territories, Congress has power, if it sees fit to exercise it, to repeal or annul territorial legislation, but until it exercise this authority, in a particular case, as has been stated before, the laws of the territory stand upon the same footing as though the territory was a State.

The Florida Bonds, Decision Joint Commission, 246.
Janes *vs.* Buzzard, Hempstead, 259.
Scott *vs.* Sandford, 19 How., 395.

The 7th section of the Organic Act of the territory (Brightley's Digest, p. 694), provides, among other things, "that the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States, and the provisions of this act. * * * * All the laws passed by the Legislative Assembly and Governor, shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect."

This act confers extensive powers of local legislation, and all the laws passed in pursuance of it, not having been disapproved, are to be

considered as having been approved by Congress.

3d. But upon settled principles of constitutional construction, this statute is valid. It is a mere regulation of the practice on appeal from one Court to another, and belongs to that class of laws affecting only remedies and procedure. The statute says, in substance, that an appeal shall be allowed, etc., provided the party appealing will give a bond with sureties, and the sureties agreeing that judgment may be entered up against them in case the judgment appealed from shall be affirmed. As between the sureties and the parties a valid agreement is created, by which the sureties waive the benefit of the processes of the common law in case of a default on the part of their principal, and give express authority for the entry of judgment against them. It is nothing more in substance on the part of the sureties than a power of attorney given on a sufficient consideration to confess judgment. To such an agreement on the part of the sureties, there can be no objection in law, and acts of this character, touching, as they do, merely remedial processes, are always unobjectionable.

Bronson *vs.* Kinzie, 1 How. U. S. R., 315.
Little *vs.* Gibson, 39 N. H., 505.
Inbusch *vs.* Farwell, 1 Black, 566.
Heynemann *vs.* Eder, 17 Cal., 433.
U. S. *vs.* Four Pieces of Woolen Cloth, 1 Paine, C. C., 435.
Sturgis *vs.* Croninshield, 4 Wheat., 200.
Mason *vs.* Haile, 12 Wheat., 378.
Jackson *vs.* Lamphire, 3 Pet., 280.
Patan *vs.* Pressan, 7 Lou., 301,
Butler *vs.* Palmer, 1 Hill, 325.
McClurg *vs.* Kingsland, 1 How., 202.

Bronson *vs.* Kinzie, Ibid., 315.
Gordon *vs.* South Fork Canal Co., 1 McAllister, 513.
Bank of U. S. *vs.* Longworth, 1 McLean, 35.
U. S. *vs.* Conway, 1 Hemp., 313.

The surety, in case a fraud has been practiced on him constituting a defence, or if he have any defence whatever to his obligation, is not remediless. There are many ways in which the law would afford him relief in a proper case. This, however, is not a material consideration. In conclusion, on this point, the case of Janes *vs.* Buzzard (Hempstead, 259), expressly decides that the territorial legislature may prescribe conditions upon which an appeal may be had from one territorial court to another.

4th. If, however, the judgment against the sureties should be held to be erroneous, a *venire de novo* would not be directed, for the error in the proceedings in the court below is one merely in the form of the judgment, and proceedings in the court below prior to the error complained of are not disturbed by the reversal of the erroneous proceedings.

Nelson *vs.* Hubbard, 13 Ark., 256.
Ford *vs* Wright, 7 New Hamp., 586.
Sargeant *vs.* French, 10 New Hamp., 444.
Gleeson *vs.* Chester, 1 Day, 152.
Rutherford *vs.* Moore, 24 Ind., 311.

The case would, therefore, be remanded for the entry of a proper judgment on the verdict.

**Second.**—To the second point we reply:

1st. That there is no authority whatever to be found, either in the general principles of jurisprudence or judicial decisions, for the proposition that a preliminary accounting in the Probate Court, or any other court, was necessary, in order to maintain an action upon the penal bond of the administrator. In this country, the jurisdiction and practice of Courts of Probate and Surrogate's Courts is, almost universally, the subject of special statutory regulation, and where such a preliminary accounting is necessary, with a view to ultimate proceedings upon the bond, it is rendered necessary by the express provisions of some statute. Except in that case, it has never been held to be necessary. In the nature of legal principles, this must be so. The obligation assumed is one strictly at law, being a bond for a penalty. The breach of the condition and the extent of the damages can, and indeed must always be ascertained by the jury, upon an inquiry into the facts, and there is no reason why this cannot be done, and should not be done, as well in the case of a bond for administration, as a bond conditioned for the performance of any other lawful acts; but it is not permitted to the defendant to raise this question. It was his duty to account voluntarily, as the law required him to do, and to obtain all the necessary orders, from time to time, from the Probate Court, to enable him to complete his administration.

This precise point was made in Rowland *vs.* Isaacs (15 Con. Reps., 115), where the action was brought in the name of the Judge of the Probate Court, to whom it was given, and not upon the relation of any one, and it was set up

as a defence that there had not been this preliminary accounting, as the statute of that State in the premises required. The Court held, notwithstanding the statute, that such preliminary accounting was not at all necessary, and that it was not an objection open to the defendant under any circumstances, because if a preliminary accounting was necessary, it was his official duty to see to it that it was had, and he could not set up his own neglect of duty as a defence.

2d. As to the relation of an administrator *de bonis non* to this action, the authorities cited in the original points are decisive, and they rest on sound principles, but it would be sufficient to say that this question was not raised below, and will therefore not be considered here. It could only have been properly made below by a plea. —Gould's Pleading, pages 234 and 235—or by motion for a nonsuit or an arrest. It was not made in any of those forms.

The motion in arrest will be found at page 60. It is based upon an alleged error of the Court in permitting the plaintiff to amend his petition and in overruling a demurrer.

The only reference made to the question is in what purports to have been a demurrer, page 10, folio 27, of the record, and it is in these words, "and for that the breaches assigned in "said petition show no ground upon which "said Griffin, as administrator *de bonis non*, &c., "can in law sue for the forfeiture and damages "for his use and benefit."

This demurrer was overruled, entirely waived by pleading over, and now constitutes no more a part of the record than as though it had never had any existence.

Young *against* Martin, 8 Wallace, 356.

Trigg *against* Shields, Hardin, Kenty., 176.
Miller *against* Heath, 7 Cowen, 101.
1st Chitty, side paging, 670.

It follows, of course, that this point not having been presented to the Court, and the ruling of the Court preserved upon the record in such a manner as to be the subject of error, if erroneous, the assignment of error could properly have no relation to it. This will be found at pages 90 and 91 of the record, and in this assignment no allusion is made to this point. It thus appearing that the question was not raised in the Court below, it cannot be raised here.

Pomeroy *vs.* Bank of Indiana, 1 Wallace, 592.
Providence *vs.* Babcock, 3 Wall., 230.
Marine Bank *vs.* Fulton Bank, 2 Wallace, 252.

3. But there is another answer quite as decisive.

The nominal relation of the administrator *de bonis* to the suit may be entirely disregarded, and his name and title treated as surplusage.

An action is well brought in the name of the obligee, without any mention whatever of the name of the party for whose benefit the suit is brought. The legal title is in the obligee alone. No one else can maintain a suit to enforce the obligation. There may be many beneficiaries, who will be entitled to share in the proceeds of the recovery, but that is a matter between the party having the legal title and right of action, and his *cestui que trusts*, with which the obligor has nothing to do. Thus it was said by the Court, in the People *against* Holmes, 5 Wendell, 197, which was an action upon a constable's bond: "Although it is a bond given expressly

" to the people, yet it is contended that a suit " on it cannot be maintained in the name of " the People, but that the action should be " covenant: on the condition in the name of the " party aggrieved, covenant might undoubtedly " be maintained on the bond, but it does not " follow that an action in the present form can- " not be sustained. It is certainly a novel ob- " jection that a suit cannot be maintained in the " name of the party to whom a bond is given. " The general principle is, that no other person " than the obligee in the bond can be the nom- " inal plaintiff."

The same point was taken and overruled in Rowland against Isaacs, 15 Conn., 123, where the action was in the name of the Judge of Probate, in whose official character the bond had been taken, and in that case the Court say, in substance, that the plaintiff in whom the legal title and right of action is, recovers for the benefit of whom it may concern, and that it does not concern the defendant, whose duty will have been performed when he pays the amount of damages assessed by the jury for the breach of his obligation. To the same point is

Lorton against Irvine, 9 Wendell, 234.
Chaplain *vs.* Canada, 8 Conn., 286.
Montague *vs.* Smith, 13 Mass., 405.
1st Chitty's Pleadings, pages 1, 2 and 3.

As to the manner in which the action on the bond shall be prosecuted, it is to be observed that the laws of the Territory are silent, and the case is therefore to be governed by the general principles applicable to the question.

**Third.**—To the third point of the plaintiff in error we reply:

That it proceeds upon a radical misconception and misunderstanding of the dealing of Hinckley, the administrator removed, in respect to the property in question.

The interest of the deceased in the assets of his late firm was adjusted, valued and settled, as between the administrator Hinckley and the surviving partners, at the sum of $46,538.60. That this was so, in fact, was not even questioned or controverted below. It was conceded and the case proceeded upon that theory. Hinckley, himself, says, in his first report, page 7 of the record: "the firm or partnership of which he was a mem- "ber, with Charles H. Blake and W. V. B. Ward- "well, at Fort Craig and other places in this Ter- "ritory *were owing and due the said deceased the* "*sum of* $46,538 60. *The undersigned, being satis-* "*fied that the sum stated is correct, has agreed to re-* "*ceive of the said Charles H. Blake and W. V. B.* "*Wardwell, in full discharge of the capital and* "*profits of the said deceased the aforesaid sum. The* "*said Blake & Wardwell have agreed to pay the* "*said sum as soon as they can arrange their af-* "*fairs to do so, and within a reasonable time.*"

With this amount he charges himself in his accounts rendered in 1867 and 1868, page 22, folio 59; page 24, folio 65.

Elkins, who succeeded Hinckley, enquired of him why he had not collected this sum or taken some security. Elkins says: "I called on Beall, "who was administrator of the estate, about the "estate, and asked him if he had collected the "$46,538 item or any part of the same—had fre- "quent conversations with Beall—continued until "February, 1870. He stated that Wardwell & "Blake had paid him about $5,000—asked him "why he had not *taken some security. I told him I*

*"thought it was not safe; asked him if he had any "note for the amount. He said he had not; all he had "was in the inventory; when he sold the property he "supposed they would pay for it; he thought the sum "was the fair value of the interest of the estate."*

This question of fact was properly submitted to the jury by the Court and was definitely disposed of by the jury.

The struggle on this point, of the counsel for the defendant below, was to show that Beall had not acted wrongly in giving the credit, inasmuch as it took a long time to settle up the affairs of a co-partnership. There was no serious pretence that the assets had not been sold for a fixed and liquidated sum. Upon the facts submitted to the jury and found against the defendant, his liability upon the authorities is too plain for discussion.

The charge was right and the requests immaterial, improper and irrelevant, each and every one of them.

**Fourth.**—The Fourth Point of the plaintiff in error, is in the main, sufficiently answered by the preceding point.

As to the suggestion that a different rule applies to the sale of tangible property, by an executor, from that applicable to the sale, by an executor of intangible property, or things in action, it is with great respect submitted, that in the nature of legal principles, there can be no such difference, nor is there any authority cited, or ot be found in support of it; both are property, and property held in trust, to be administered according to the principles of law, which prescribe, define and regulate the duties of trustees.

**Fifth.**—The Fifth Point of the plaintiff in error really requires no answer.

The original letters were in the possession of the defendant below, who failed to produce them. The admission of the copy, without notice to produce, was a mere matter of form and practice, and could by no possibility have worked any prejudice to the defendant. As to its not having been filed, that is a point by the statute addressed entirely to the discretion of the Court.

**Sixth.**—The objections taken below, and stated in the Sixth Point of the plaintiff in error, are too trivial to require notice.

W. W. MacFarland,
Of Counsel.

Compiled Laws of N. M. 1865
p. 34. 36. Sec. 4.

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1 AK M. 121. 632
1 How Miss 8)